REPORT OF THE SPECIAL OUTSIDE COUNSEL IN THE MATTER OF SPEAKER JAMES C. WRIGHT, JR.

COMMITTEE ON
STANDARDS OF OFFICIAL CONDUCT
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FEBRUARY 21, 1989

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February 21, 1989

The Hon. Julian C. Dixon
Congress of the United States
House of Representatives
2400 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed herewith is Special Outside Counsel's Report on the Preliminary Inquiry conducted pursuant to the Committee's June 9, 1988 resolution regarding Representative James C. Wright, Jr.

Sincerely,

RICHARD J. PHELAN

RJP:tcr

Enclosure

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I. INTRODUCTION

On June 9, 1988, the Committee on Standards of Official Conduct (the "Committee") resolved to conduct a Preliminary Inquiry into assertions that actions taken by James C. Wright, Jr. ("Wright"), the current Speaker of the House, may have resulted in violations of the Code of Official Conduct, or a law, rule, regulation or other standard of conduct. These assertions were made in the press and in the Complaint filed with the Committee by Congressman Newt Gingrich on May 26, 1988 (the "Complaint").

The Committee charged Special Outside Counsel with the responsibility of conducting a full and fair inquiry into the allegations and the actions complained of as set forth in the June 9, 1988 Resolution. Over the course of the last six and one-half months, we have taken the testimony of seventy-three witnesses, reviewed thousands of documents and over 7,000 pages of hearing transcripts, and considered all relevant standards of conduct which govern Members of the House of Representatives. This Report contains a comprehensive analysis of the information received during the inquiry as well as the conclusions reached.

A. Scope of the Inquiry

The June 9, 1988 Resolution set forth six areas of inquiry into Wright's activities:

1. The circumstances surrounding lobbying efforts on behalf of a constituent with whom he had an interest in a private gas well venture;
2. The circumstances surrounding intervention in a matter before the Department of the Interior on behalf of Texas Oil & Gas Company;
3. Whether campaign funds were used, directly or indirectly, to pay for publication of a book from which he received a 55-percent royalty;
4. Whether government resources were improperly used to complete work on a book from which he received royalties;
5. The use of a condominium in Fort Worth, Texas; and
6. The possible exercise of undue influence in dealing with officials of the Federal Home Loan Bank Board.

Special Outside Counsel's specific mandate was to elicit information directly relevant to each area set forth in the Committee's Resolu-

tion. From time to time, testimony or documentary evidence made it clear that in order to present a complete picture of the events and actions at issue, it would be necessary to inquire into subjects not specifically incorporated into the language of the Resolution, but in our view, nonetheless necessary and relevant to the designated areas of inquiry and plainly consistent with the purpose of the Resolution. We, therefore, pursued all such lines of inquiry for evidence which would provide the Committee with a full and fair understanding of the facts.

B. Standard of Proof

The Committee's Rules of Procedure provide that for the purpose of the Preliminary Inquiry, "any probative evidence may be used." [Rule 11(a)(2)(E).] Despite this latitude, most of the evidence underlying this Report is sworn testimony. Special Outside Counsel has considered all probative evidence received during the inquiry and has included all such evidence in this Report to the Committee.

The Committee Rules also provide that "[i]f the Committee determines on the basis of the report of the Committee staff . . . that there is *reason to believe* that the violation occurred, the Committee may direct the staff to transmit to the respondent a Statement of Alleged Violations." [Rule 11(b) emphasis added.] The Rules further provide that "[a]t a disciplinary hearing the burden of proof rests on the staff with respect to each count to establish the fact alleged therein clearly and convincingly by the evidence that it introduces." [Rule 16(e).] Although at this stage in the proceedings, the Committee need only have a "reason to believe" a violation occurred in order to go forward with a Statement of Alleged Violations, our conclusions that further action should be taken by the Committee are based upon an evaluation of probative evidence which we believe "clearly and convincingly" establishes each fact relied upon in our analysis.

II. SUMMARY OF FACTS AND CONCLUSIONS

The facts discovered during the Preliminary Inquiry demonstrate that Wright has violated, at times repeatedly,[1] House Rule XLIII, clauses 1 (conduct reflecting discreditably on the House) and 4 (accepting improper gifts); House Rule XLIV (failing to disclose income and gifts); House Rule XLVII, clause 1 (exceeding the limit on outside earned income); Code of Ethics for Government Service, consideration 5 (receiving favors which may influence performance of government duties); and 2 U.S.C. § 441i (retaining excessive honoraria). These violations occurred over the period from 1978 through 1988 during which Wright committed the following acts:

- In 1979, Wright accepted an interest in a successful natural gas well from Texas oilman, the late Monty Moncrief, which was an unreported gift worth approximately $82,000-$90,000.
- From 1984 through 1987, Wright received approximately $54,600 in unreported gifts, honoraria, and other outside income from lobbyists and special interest groups styled as "royalties" from the sale of his book, *Reflections of a Public Man*.
- From time to time from 1978 through 1988, Wright received approximately $150,000 in unreported gifts from Texas real estate developer, George Mallick, in the form of reduced interest on a loan; procurement of a loan; salary paid to Betty Wright for work not performed; free and below-market value housing in Fort Worth; and the use of a 1979 Cadillac Seville in Washington, D.C.
- In 1986 and 1987, Wright improperly used his position in the House leadership to exercise undue influence on the actions taken by the Federal Home Loan Bank Board to control the burgeoning savings and loan crisis in Texas and elsewhere.

The following is a summary of facts discovered and conclusions reached by Special Outside Counsel on each of the six areas of inquiry set forth in the Committee's Resolution. A detailed exposition of the Preliminary Inquiry is provided beginning on page 25 of this Report.

A. Wright's Gas Well Investments With the Moncrief Family

Beginning in late 1978, Wright intervened with the State Department and the Egyptian government on behalf of the Neptune Oil

[1] Special Outside Counsel believes that Wright committed 116 violations of House Rules.

Company in order to secure for Neptune an opportunity to resolve a dispute with Egypt over the right to explore, develop and operate off-shore oil fields in the Gulf of Suez. Neptune had a contract with the State of Israel to explore and develop the Israeli-occupied territory. However, as a result of the Camp David accords in September 1978 and the subsequent peace treaty negotiations, Israel was required to return the occupied Sinai and Gulf of Suez territory to Egypt, relinquishing all rights to the oil fields without compensation. Egypt would not recognize Neptune's rights under the Israeli contract. Thus Neptune stood to lose its investment and expected profit from the operation of the oil fields.

Wright introduced Richard Moncrief and other Neptune principals to State Department officials, contacted Secretary of State Cyrus Vance and Egyptian Ambassador Ashraf Ghorbal, and personally delivered a letter to Egyptian President Anwar Sadat while he was in Washington. Wright's intervention on behalf of Neptune Oil does not in itself appear to have violated any law or ethical standard.

However, the facts of certain investment opportunities provided to Wright by the Moncrief family at the same time he was intervening for Neptune demonstrate that Wright improperly received a gift valued at more than $100 from Monty Moncrief, a person with a direct interest in legislation before Congress. We were unable to establish with the required certainty that the gift was compensation for Wright's intercession on behalf of Neptune Oil.

Wright accepted the opportunity to purchase part of the Moncrief family interest in two east-Texas gas wells from Monty Moncrief, the late patriarch of the Moncrief family who was for many years active in Washington, D.C. as a lobbyist for the Independent Petroleum Association. The first opportunity, the Whatley well, appears to have been an ordinary, personal business transaction. For example, Wright received a written offer to participate in drilling the well; accepted the offer by written commitment to pay his share of all drilling costs; obtained financing to pay for his drilling costs; and actually paid those costs all prior to the time gas was discovered in the well on July 11, 1979. Put another way, he risked the amount of the drilling costs against the chance that the well would be dry. Had the well been dry, the investment would have been lost.

Once gas was discovered in the Whatley well, although it was commercially productive, it was clear that it would not be the investment predicted by the Moncriefs. Production and, therefore, profit from the well, if any, would be substantially less than had been anticipated.

In contrast, in Wright's second investment opportunity, the L. D. Williams No. 1 well, Wright made no written commitment to pay drilling costs and did not obtain financing or pay for any costs until October 1979, long after gas was discovered in that well on June 27, 1979. Thus unlike the Whatley investment, Wright invested in Williams No. 1 already knowing that it was a commercially successful well. The risk of losing his investment, which made Whatley an ordinary business transaction, was absent in Williams No. 1. Thus Wright received a gift worth approximately $82,000-$90,000, the difference between the drilling costs and the increased value of the well after gas was discovered. Wright failed to disclose his receipt of this gift on his Financial Disclosure Statement for 1979.

Wright also deferred paying two Moncrief invoices for Williams No. 1 drilling costs without paying interest on the unpaid balance. One invoice for $8,668.21 remained unpaid from October 19, 1979 until September 4, 1980. A second invoice for $7,703.64 remained unpaid from April 18, 1980 until July 1, 1980. Although it appears that Wright may have received interest-free loans from Monty Moncrief for $8,688.21 for ten months and $7,703.64 for two months—gifts worth nearly $1,200—it is impossible to determine whether Moncrief's failures to collect the overdue balances were intended as gifts, or were merely bookkeeping oversights. Thus we cannot conclude with the required certainty that Moncrief's failures to collect interest were gifts to Wright.

In 1984, at a time when the Whatley well was "shut in," *i.e.*, had temporarily ceased production, Wright asked Monty Moncrief to buy back his interest in the well. Wright was receiving no income from the well and consequently he made no payments on his loan from Continental National Bank. The Bank's Chairman stated that under those circumstances he would have required other arrangements for repayment of the nearly $20,000 outstanding balance.

Monty Moncrief agreed to buy back the Whatley interest for $20,000. While Moncrief's re-purchase of Wright's interest in the Whatley well appears to have been a favor to Wright, it also appears to have been purchased at about the market value of the interest. Therefore, there was no gift to Wright.

Similarly, when Moncrief agreed in June 1984 to take a "farm out" from Wright of Wright's interest in the drilling of a second Williams well (*i.e.*, a buy-out of most of Wright's interest in the well), the terms of the "farm out" were in accordance with industry custom and the price was at or near market value. Thus there was no gift to Wright; nor can either the re-purchase or the "farm out," which both

took place in 1984, reasonably be viewed as compensation to Wright for his efforts on Neptune's behalf in 1979.

As discussed in full in Section III. A. of this Report, Wright's receipt of the gift in excess of $100 from Moncrief violates House Rule XLIII, clauses 1 and 4; and consideration 5 of the Code of Ethics for Government Service. His failure to disclose the gift violates House Rule XLIV.

B. Wright's Efforts on Behalf of Texas Oil & Gas Corporation

In September 1979, Wright co-signed a letter to Secretary of the Interior, Cecil D. Andrus, on behalf of Texas Oil & Gas Corporation ("TXO"). The letter provided Andrus with background information on TXO and its dispute with the Arkla Exploration Company over mineral exploration leases on land in Arkansas.

Wright held no interest in TXO at any relevant time. As discussed in Section III. A. of this Report, from February 1979 until March 1984 Wright held an interest in the Whatley well, an east-Texas natural gas well drilled and operated by TXO. However, as an investor in the well, Wright's financial return was determined only by the productivity of the well and could not have been affected by TXO's success or failure with respect to the Arkansas leases. Wright's letter did not comment upon the merits of the dispute between TXO and Arkla. Therefore, it is not a prohibited *ex parte* communication under The Government in the Sunshine Act, Pub. L. 94-409, 4, § 90 Stat. 1241, 1246, 5 U.S.C. § 557(d).

The letter was the only communication on the subject between Wright or his staff and Andrus or his staff. Therefore, the letter was not an exercise of undue influence by Wright. Furthermore, Andrus and undersecretary James A. Joseph both stated that the letter made no demand or request that they deemed unusual or improper. Nor did the letter affect the decision made by the Department with respect to the leases.

As discussed in full in Section III. B. of this Report, Wright's communication with the Secretary of the Interior on behalf of TXO violated no law or standard of conduct.

C. Wright's Publication and Marketing of *Reflections of a Public Man*

In early 1984, Wright and his close friend William Carlos Moore discussed producing a book of Wright's earlier speeches, poems and writings which Wright and Moore testified would be sold at low cost to a very broad audience including college students and "average

citizens." Wright told the Committee he wanted to give people an idea of what his personal feelings were on a number of subjects so that they could get to know the Majority Leader and next Speaker of the House.

Wright also discussed the book with his staff. Matthew Cossolotto, Wright's congressional staff researcher and speech writer, testified that Wright first raised the subject of the book at a staff breakfast in February 1984. Wright asked the staff to think about ways to market the book and suggested that when he gave a speech to a trade association or other group, he could sell the group books instead of taking an honorarium. Cossolotto testified that Wright explained to the staff that unlike honoraria, book royalties are exempt from the 30 percent maximum limit on outside earned income.

Throughout 1984, Wright had members of his staff collecting his old speeches and compiling, editing, typing and proofreading the manuscript for his book. Wright's staff obtained celebrity endorsements of the book for the back cover and selected a photograph of Wright for the front cover.

Carlos Moore formed the Madison Publishing Company in 1984 as a division of Madison Systems Corporation, Moore's political consulting firm, for the purpose of publishing Wright's book, *Reflections of a Public Man*. However, Madison Publishing did not "publish" Wright's book. Nor has it published any other book.

Madison Publishing designed the layout and printed the cover for Wright's book. Moore sent the book itself to be printed and assembled by The Printing Center in Fort Worth because, as he testified, Madison Publishing did not have the capacity to print 20,000 copies. The Printing Center actually printed 19,068 books and reduced the charge to Madison Publishing accordingly. The final product was completed in early December 1984 and delivered in two installments on December 6 and 18, 1984.

Wright himself applied for and secured copyright protection for the book and hired a Fort Worth real estate attorney to draft a "royalty" agreement between Wright and Madison Publishing Company. Wright supplied the attorney with specific provisions to be included in the agreement including the provisions for a 55 percent "royalty." The agreement was executed on December 12, 1984, after 2,160 copies of the completed books had already been delivered to Moore.

The agreement provided that Wright would receive $3.25 (nearly 55 percent) of the $5.95 list price on all retail sales of the book. Moore would receive $2.70 from which he would pay all printing and

marketing expenses. Such "royalty" payments are unheard of in the publishing industry. In fact, Wright's previous royalty contracts with three major publishers provided for standard industry royalties ranging from 10 percent to 15 percent, depending upon sales. Morton Janklow, an expert on the publishing industry, testified that no rational publisher would agree to a 55 percent royalty on list price because it could not make a profit. Janklow also testified that in his opinion as literary agent for Nancy Reagan, Senator Daniel P. Moynihan, Helmut Schmidt, Sidney Sheldon and Danielle Steele, Wright's book was not commercially publishable.

Although the agreement also provided that Madison Publishing would publish and market the book, in fact, Wright and his staff provided many of the ordinary services of a publisher and made the most significant contribution to marketing efforts.

A publisher normally does the editing and revision of the manuscript; the copy-editing, design, layout, printing and binding of the book; the preparation of the book cover, including obtaining endorsements; and all marketing including listing in sales catalogs, making telephone and direct sales contacts, preparing media displays, arranging book tours and appearances, and advertising by mail directly to schools, libraries, wholesalers, bookstores, and other buyers of books. The publisher also obtains copyright protection for the author in the author's name and at the publisher's expense.

In this instance, Moore designed the layout and printed the cover of the book. He hired others to typeset and print the book itself. All other aspects of book production were performed by Wright or his staff. Moore also sent out 300 to 500 letters soliciting orders for the book and employed 12 to 15 people for four hours a day during one week to make telephone solicitations from voter registration lists. Moore arranged an autograph party, one or two newspaper advertisements and an appearance by Wright on the Larry King Show. Moore's marketing efforts resulted in precious few sales to "average citizens." In fact, Moore testified that he never intended to sell the book to bookstores where average people could buy them because bookstores would only purchase at the discount price of $3.00 per copy. "That doesn't leave you much room." [Moore Tr. 323.]

The real focus of the marketing effort for *Reflections of a Public Man* was on bulk sales to trade associations and other groups. Almost 98 percent of all sales of *Reflections of a Public Man* were bulk sales of 15 or more books. In some instances, Wright's staff informed various groups Wright spoke to that because he had already reached the maximum limit on outside earned income for that year, he would not be able to keep an honorarium offered to him. The staff then

recommended that instead of paying Wright an honorarium, the organization could purchase books for the same amount.

For example, Wright gave a lecture in October 1984 at Southwest Texas State University. The University paid Wright an honorarium of $3,000 in addition to his expenses, but was subsequently informed by Wright's staff that he would be unable to accept an honorarium. Wright's staff suggested that the University purchase 504 books for $3,000 in lieu of the honorarium. The University purchased the books and distributed most of them to students in its political science department. Wright endorsed the $3,000 check over to Madison Publishing Company. Despite the change in the nature of the transaction, the University's records plainly list the $3,000 expenditure as an honorarium for Wright's appearance. Instead of passing up $3,000 or donating it to charity, Wright thus received a $1,650 "royalty" for his lecture at the University.

Wright also spoke at a Satellite Broadcasting and Communications Association ("SBCA") trade show in September 1985 just several weeks after SBCA had purchased 1,680 copies of *Reflections of a Public Man* for $10,000. SBCA testified that although it historically has paid honoraria and expenses to congressmen for their appearances, in this case SBCA's legal counsel, who arranged for Wright to speak at the trade show, suggested that SBCA purchase the books instead. Thus Wright received a $5,500 "royalty" for his appearance before the SBCA.

Not all bulk sales were in lieu of honoraria. For example, Carlos Moore arranged a sale of 2,000 books to the Teamsters for $12,200 paid out of the DRIVE Political Fund. The books were distributed to Teamster members. Wright had not spoken at any Teamster event.

In addition, S. Gene Payte, a Fort Worth real estate developer, testified that he wanted to give Wright a $5,000 gift and, in fact, had given a $5,000 check to Betty Wright. Wright subsequently informed him that he could not accept the gift and returned the check to Payte. Payte continued to search for a way to give cash to Wright and shortly after receiving the first check back from Wright, wrote a second $5,000 check, this time to Madison Systems for "revision and distribution of Wright's books." Payte testified that he expected to receive 1,000 copies of the revised edition of the book and, in fact, he made a second payment of $1,000 when he realized that $5,000 would not buy 1,000 copies of the $5.95 book. However, the book was never revised. Payte testified he received approximately 300 to 500 copies of the old book instead. No further accounting was made.

Some bulk purchasers did not even want the books they paid for. For example, Wright addressed the annual meeting of the Mid-Continent Oil & Gas Association. Mid-Continent purchased $1,000 worth of Wright's book in lieu of paying him an honorarium, but asked to receive only three books. Mid-Continent suggested that the remaining books be distributed to libraries and other public institutions of Wright's choice. There are no records reflecting the requested distribution.

The Select Committee on Ethics interpreted Rule XLVII, clause 1 in Advisory Opinion No. 13 which makes it clear that the limitations on outside earned income may not be avoided by the mere characterization of a payment. "In all cases, the real facts will control." [Select Committee on Ethics, Advisory Opinion No. 13, Ethics Manual p. 179.] In this case, the facts reveal that Wright compiled a series of previous speeches and writings into a commercially unpublishable manuscript. His good friend Carlos Moore formed a publishing company for the purpose of producing the book and entering into a so-called "royalty" agreement inordinately favorable to Wright. Together they sold the book almost exclusively to lobbyists, persons interested in legislation and other interest groups in order to provide income to Wright.

The resulting income does not therefore become "royalty" income just because Moore calls himself a "publisher" and claims to pay "royalties" on book sales. The "royalty" contract was not an arms-length agreement between an author and his publisher, but a joint business venture—a means by which Moore could help his friend Wright obtain money in excess of congressional limitations.

Receipts from sales of Wright's book should thus be characterized as outside *earned* income, not copyright royalties, and subject to the limits and reporting requirements for such income. As Advisory Opinion No. 13 makes clear, income a Member earns through his own personal efforts is earned income for purposes of Rule XLVII, clause 1 even when the income is first paid to a corporation and then distributed to the Member. In this matter, Wright earned income from the books through his performance of publisher's duties including the marketing of the book.

However, whether or not the income from sales of the book may be considered "royalties," when books are allegedly "sold" to lobbyists or interest groups, but no books are delivered to those groups in exchange for their payments, the books retained are "gifts" received from persons with an interest in legislation before Congress. Those books are also "gifts" when the group "donates" the books to a library or institution of *Wright's* choice.

Furthermore, where the books are purchased in lieu of paying a customary fee for a speech or appearance, the payment received is an "honorarium," in the form of a "royalty." The term "honorarium" is defined to mean "the payment of something of value 'accepted as consideration for an appearance, speech, or article.' " [Ethics Manual, p. 83, *quoting* 11 C.F.R. § 110.12(b); *see also* 2 U.S.C. § 31-1.] In this case, the "royalty" was itself the honorarium paid for Wright's appearance.

Thus as discussed in full in Section III. C. of this Report, Wright's receipts of outside earned income, including honoraria, in excess of 30 percent of his congressional salary are violations of House Rule XLVII, clause 1. In addition, gifts exceeding $100 from lobbyists and other groups with interests in legislation before Congress are violations of House Rule XLIII, clause 4. Wright's receipt of an honorarium in excess of the $2,000 limit imposed by 2 U.S.C. § 441i is a violation of that law. Finally, his failures to disclose the receipts of income, gifts and honoraria are violations of House Rule XLIV. [See Tables C-1 and C-2 for a summary and tabulation of all violations.]

We found no evidence that campaign funds were used to produce the book.

D. Wright's Use of Government Resources to Produce and Market *Reflections of a Public Man*

Wright used members of his staff to compile, type, proofread, edit, and market his book, *Reflections of a Public Man*. The book was Wright's own project, from which he personally received income.

Matthew Cossolotto, a writer and researcher on Wright's staff, testified that he spent about 200 hours preparing the book for printing. Other members of the staff had more limited roles in the preparation of the book, *e.g.*, Marshall Lynam, Wright's Chief of Staff, solicited the quotes for the back cover of the book and also participated to some extent in marketing the book; Charmayne Marsh, Wright's Press Secretary, helped to select the photograph used on the cover of the book; Mike Grisso occasionally entered passages for the book onto the word processor; Dorothy Biard, the office librarian, assisted in gathering and locating material; and Cathy Mitchell, Wright's Executive Assistant and Scheduler, also participated in marketing the book to various groups Wright gave speeches to in 1984 and 1985. In addition, Wright used other government resources, including a computer, to complete the manuscript.

Certainly, materials paid for by government funds may not be appropriated for personal use. Thus, technically, Wright's use of a government word processor, for example, to prepare a book from

which he derived personal income was a violation of 31 U.S.C. § 1301(a) which provides that government appropriations are to be used *solely* for the purpose for which they were appropriated.

It is not so clear, however, whether Wright's use of his congressional staff to produce and market his book is a violation of 31 U.S.C. § 1301(a). No attempt was made to keep work on the book separate from work on official business. No records were kept of hours worked on the book as compared to the hours spent on official business. Matthew Cossolotto, who spent far more time than any other staff employee working on the book, testified that he worked on the book about 200 hours over eight to eleven months. Other staff members also testified that during that period, there were weeks in which staff worked substantially more than 40 hour weeks. Thus it is entirely possible, and in some instances even probable, that although some work on the book was certainly done during the normal 9 to 5 work day, staff employees worked on the book in addition to completing all the work ordinarily done as part of their official duties.

Such use of staff time is specifically permitted under House ethics guidelines. "[D]ue to the irregular time frames in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times, these employees may work more than double the usual work week—at others, some less. Thus employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods." [Select Committee on Ethics, Advisory Opinion No. 2, Ethics Manual, p. 157.] Moreover, Members are given wide discretion to determine the conditions and the duties of employment. [Ethics Manual, p. 23.] The enormous breadth and ambiguity of these "guidelines" makes it virtually impossible to prevent Members from using staff employees paid by government funds from working on projects providing personal income to the Member.

Thus as discussed in full in Section III. D. of this Report, because it is impossible to determine with the required certainty that Wright had his staff working on the book during time that should have been devoted to his official business, we do not conclude that Wright violated any law or standard of conduct.

E. Wright's Use of a Condominium in Forth Worth, Texas

In 1979, Jim and Betty Wright and their good friends George and Marlene Mallick formed and became equal shareholders in Mallightco, Inc. Mallightco invested in commercial paper, securities, real estate and oil and gas ventures for the general purpose of making money for its shareholders. Mallightco was funded in February 1980

with $58,127 in cash from the Mallicks and roughly the equivalent in marketable securities from the Wrights.

Throughout Wright's investment in Mallightco, it was used as a conduit for cash flowing from the Mallicks to the Wrights. For example, Mallightco began lending money to the Mallicks and the Wrights in August 1980. The first loan, on August 15, 1980 was for $4,375 each. The second loan on September 3, 1980 was for $5,536.09 each. The Mallicks paid off their loans in December 1980 by selling Mallightco a 1979 Cadillac Seville valued at $10,575 and credited against the loans. The Wrights made no payments on these loans during 1980.

In September 1980, Marlene Mallick obtained a $150,000 loan from the Ridglea Bank which she immediately loaned to Mallightco. The interest rate on the loan from Ridglea Bank apparently fluctuated above the prime lending rate. On September 12, 1980, the Mallicks and the Wrights then each borrowed $75,000 from Mallightco at a fixed interest rate of 13.5%. When interest rates in the economy soared to their highest rates in history (the prime rate reached 20.5% in May 1981 and again in July 1981), the interest rate on the loan from Mallightco to the Wrights remained at 13.5%.

The net effect of these loans from Mallightco to the Wrights is that during the first year of business, the Wrights had recovered their entire investment from Mallightco plus an additional $25,000. The Mallicks had added $65,000 in cash and a $10,575 car to their initial investment. The Wrights received a gift worth over $100 from the Mallicks in the form of reduced interest payments during 1981, 1982, and 1984 when market rates exceeded 13.5 percent. They also received a gift from the Mallicks in the form of Marlene Mallick's creditworthiness and her ability to obtain financing from the Ridglea Bank for the Wrights. Although the gift is difficult to value, we believe it is worth more than $100. Wright's failure to disclose these gifts are also violations of House Rule XLIV.

In 1981, Mallightco loaned the Wrights an additional $37,000. Over the period 1981 through 1983, the Wrights and the Mallicks made regular payments on their loans from the proceeds of their other investments. However, beginning in 1984, the Wrights made little progress in reducing the outstanding principal balance and, in fact, were not meeting their interest payments. The debt continued to accrue interest; Mallightco never demanded payment from the Wrights or took any steps to collect the debt.

Mallightco distributed several dividends to its shareholders in 1986 and 1987. Despite the Wrights' failure to make significant payments

on their loans, the company distributed $59,000 in cash to the Wrights as dividends. While the Mallicks also received dividends during this period, all dividends to the Mallicks were paid in the form of credits against their outstanding debts to the company until their loans were completely repaid in 1987.

On June 9, 1988, the Wrights (through the James C. Wright, Jr. Blind Trust formed in October 1987) sold their Mallightco shares back to the company for $350,000, the alleged market value of the shares at the time of sale. The price consisted of $230,000 cash and a $120,000 unsecured, five-year, 10 percent interest-bearing note subordinate to all present and future debt of Mallightco. The Wrights paid back most of their outstanding loan balance, then $80,000, from the cash received from the sale. Approximately $12,700 in accrued interest was forgiven in the transaction between Mallightco and the Blind Trust.

It appears that the Wrights received greater benefit from their interest in Mallightco than did the Mallicks since the Wrights had the use of a substantial amount of cash provided by the Mallicks. However, although no effort was made to collect the Wrights' loans from Mallightco, those loans did accrue interest at the rate of approximately 10 percent per year and were ultimately paid back almost entirely. Although $12,700 in interest was not paid back, that transaction occurred between Mallick and the trustee of Wright's Blind Trust. Special Outside Counsel assumes that Wright was unaware of this gift to his Blind Trust and will rectify the account with Mallick when the gift is made known to him. Thus Wright ultimately paid for the use of the money he borrowed and has apparently not violated any law or ethical standard with respect to his Mallightco investment.

On the other hand, we believe that Wright violated House Rules with respect to his indirect receipt of and failure to report additional gifts from the Mallicks bestowed in the form of salary paid to Betty Wright by Mallightco; free housing to the Wrights in Fort Worth from 1979 through March 1988; and the use of a 1979 Cadillac Seville in Washington, D.C. from 1983 until approximately February 1989.

Betty Wright began working for Mallick in 1979 as a part-time consultant for Mallick Properties, Inc. which hired Mrs. Wright to help Mallick expand his real estate ventures into areas of Texas beyond Fort Worth. Mrs. Wright earned $18,000 per year for her part-time work on a brochure entitled "The Mallick Community Concept"; for market studies of Austin and San Antonio, Texas; and for her access to officials and other key people in the Austin and San Antonio areas. Although it is impossible to determine how much time

Mrs. Wright devoted to her employment with Mallick Properties, Inc., it does appear that she did identifiable work on projects arguably within her expertise which may have been worth $18,000 a year to the company.

On January 1, 1981, Mrs. Wright went on the payroll of Mallightco, Inc. at a salary of $1,500 per month. According to Mallick, Mrs. Wright was hired as a consultant to seek out new investment opportunities for Mallightco. However, Mrs. Wright, formerly on the staff of the Subcommittee on Investigations and Oversight of the House Public Works Committee,[2] had no education or prior experience in investment analysis or financial counseling. She performed few, if any, services to Mallightco which has no record of any work product she created.

Furthermore, although Mallick testified that Mrs. Wright "assisted" him and "advised" him, he could not articulate what valuable services she performed. He testified to research she did on several investment opportunities during the four years she was paid by Mallightco, but could not produce any research reports or even point to one investment Mrs. Wright researched which was ultimately made by the company.

Moreover, although Mallick was the one responsible for making investment decisions and both he and his assistant, Pamela Smith, performed services of value for Mallightco, neither Mallick nor Smith received a salary from Mallightco. In fact, Mrs. Wright's salary was Mallightco's greatest expense. The company frequently had to borrow money from the Mallick Company or other Mallick entities in order to pay Mrs. Wright's salary. Ultimately, Mallightco could not continue the expense; Mrs. Wright's salary was suspended as of December 31, 1984. Thus from 1981 through 1984, Mrs. Wright's salary was a gift from Mallick.

During the 1979 through 1984 period that Mrs. Wright was on the payroll of Mallick Properties, Inc. and Mallightco, she and her husband also received free housing from Mallick just steps away from his office in Fort Worth. Mallick testified that housing was provided, not as a part of compensation, but because it was convenient for him to have Mrs. Wright living only a few feet away from his office. Mallick could not explain why her job required her to be so close to his office. In fact, much of her work for Mallick Properties was done in Austin and San Antonio. Moreover, throughout her employment with Mallick, Mrs. Wright lived primarily in Washington, D.C.,

[2] The subcommittee's name was later changed to the Subcommittee on Investigation and Review.

spending on the average only one week a month in Fort Worth. Thus her consulting jobs plainly were not jobs requiring her to be close to the office. The free housing was thus not job related, but a gift from Mallick.

Beginning in 1985, the Wrights began paying rent for the housing Mallick provided. The rent was determined by dividing the fair monthly rental of the apartment, $650, by 30, the average number of days in a month. The Wrights were charged $21.67 (or sometimes $21.00 or $21.50) for each day they personally occupied the apartment notwithstanding the fact that since their furniture and personal belongings occupied the apartment every day, they had constructive possession of the apartment daily. Thus in 1985, the Wrights paid rent of $881.50 for the equivalent of 41 days at $21.50 per day. In 1986, an election year, they paid $1,711.92 for 79 days. In 1987, they paid $756 for 36 days. At fair market rent, the apartment would have cost the Wrights $7,800 per year. Finally, after renting for 10 days through March 1988, the Wrights bought the apartment at what appears to be its fair market value of $58,500. Wright's receipt of housing at substantially below market rental is a gift from Mallick.

Beginning in 1983, Mallick provided Betty Wright with free use of Mallightco's 1979 Cadillac Seville. Mrs. Wright brought the car to Washington and has used it there ever since. Although the car is referred to in Mallightco's records as the "BW Cad.," Mallightco owned the car until approximately February 1989 and paid expenses including license fees, insurance, tires and repairs until approximately February 1989.

On February 16, 1989, Special Outside Counsel received a copy of a February 9, 1989 letter to the Committee from Thomas H. Law, trustee of the James C. Wright, Jr. Blind Trust. Law stated that he recently discovered that:

> [T]he Speaker's wife, Betty, as an officer of Mallightco, used an automobile owned by that company. I have been informed that the parties treated this transaction as a loan of the car to Mrs. Wright, to be handled similarly to other loans from Mallightco to its principals. I have been further informed that the parties intended that the automobile be purchased by the Trust at its inception. Unfortunately, due to an oversight, the automobile was overlooked at the Trust's creation and never accounted for.

Thus only after Special Outside Counsel had completed its investigation and questioned witnesses regarding Mrs. Wright's use of the car, Law discovered the "inadvertent" omission of the car from the Trust records. Law further stated in his letter:

> I have currently rectified this situation by purchasing, as Trustee, the automobile from Mallightco. The purchase price was $7,050, the value of the automobile on Mallightco's books as of January 1, 1983, at which time it was taken to Washington, D.C. The Trust made a cash payment of $7,050 plus 7% interest dating back to January 1, 1983, for a total cash payment of $10,011.
>
> In addition, the Trust holds a $120,000 note, payable from Mallightco. This note has been reduced by $9,302.85, representing the sums paid by Mallightco for insurance on and repairs to the automobile from January 1, 1983 to present.

Law does not explain how the oversight was discovered. Nor does he explain how the purchase of the automobile in 1989 at its *1983* book value "rectifies" the Trust's failure to purchase the car in *1987*.

In fact, if the car was a loan from 1983 until 1987, the Trust should have reimbursed Mallightco for the monthly rental plus interest for the 1983-1987 period *and* the 1987 book value of the car plus interest from the 1987 purchase. If the car was a loan from Mallightco "to be handled similarly to other loans from Mallightco to its principals," the loan would have been recorded on Mallightco's books and ledgers as was every other loan to the Wrights. Moreover, the car is not properly an asset of a blind trust where it is possessed and used by the trust's beneficiaries on a daily basis. Plainly, such possession obliterates the "blind" aspect of the asset's disposition by the blind trustee.

It is also interesting to note that Law did not pay interest on the Wrights' "loan" from Mallightco for $9,302.85 in costs of insurance and repairs on the car. Instead, he reduced by that amount a note payable to the Wrights from Mallightco for $120,000—a note Michael Mallick testified had only "minimal" value. [M. Mallick Tr. 89.] Nor does Law explain how he arrived at 7 percent as the interest rate applicable to the 1983-1989 "loan" for the value of the car.

Plainly, Law's February 9, 1989 letter to the Committee is an attempt to cover up Wright's violations of House Rule XLIII, clause 4, with respect to Mallick's gift of the car. Mallightco never expected nor attempted to collect rental or "loan" payments for the car.

George Mallick testified that Betty Wright had the car because she "would use [the car] in connection with her work for Mallightco." [G. Mallick II Tr. 88.] However, even assuming that Betty Wright's employment by Mallightco in 1983 and 1984 was bona fide, there is no evidence that she did any work for Mallightco in Washington, D.C. which required use of a car. In addition, regardless of the legitimacy of Mrs. Wright's Mallightco employment, there is absolutely no justification for her retention of the car after she stopped working

for the company. Therefore, the value of using the car from 1983 to date and all related expenses are gifts from Mallick to Wright received in violation of House Rules.

Of course, in order for gifts to violate House Rules, they must be received from someone with a direct interest in legislation before Congress. In this matter, we believe it is clear that George Mallick had such an interest. We further impute his interest in legislation to his wife Marlene Mallick.

Mallick is and has been a major real estate developer in Fort Worth having developed commercial and residential properties worth over $160 million. Prior to 1986, Mallick also had major holdings in Texas oil and gas ventures. In 1986, he stood to profit from the proposed redevelopment of the Fort Worth Stockyards which relied heavily on public funds being appropriated by Congress. Thus, he had a direct interest in legislation affecting the taxation of real estate, interest rates, the oil and gas industries and appropriations for the Stockyards project.

In addition, Mallick's financing of certain real estate ventures through savings and loan associations and the subsequent foreclosure on at least one of those properties gave Mallick a direct interest in legislation regarding the savings and loan industry. Nevertheless, in late 1986, Wright designated Mallick to conduct an investigation and prepare a report concerning the "savings and loan crisis" in Texas. The report addressed issues of concern to Mallick and recommended legislation which would curb the industry's right to foreclose on loans in default.

Thus as discussed in full in Section III. E. of this Report, Wright repeatedly violated House Rule XLIII, clause 4; Rule XLIV; and consideration 5 of the Code of Ethics for Government Service. [*See* Table E-7 for a summary and tabulation of all violations.]

F. Wright's Possible Exercise of Undue Influence in Dealing With Officials of the Federal Home Loan Bank Board

In early 1986, the Federal Home Loan Bank Board (the "Bank Board"), perceiving worsening conditions in the Southwest's economy and thrift industry, began a massive examination of almost all the savings and loan associations in District 9, which included associations in Texas, New Mexico, Louisiana, Arkansas, and Mississippi. As a result, the Bank Board discovered that many associations, especially those in Texas where state regulations were especially permissive, were built on risky investments, uncollectible loans and fraudulent appraisals. While the real estate market was boom-

ing, these associations appeared to be doing well. However, when the bottom dropped out of the Texas real estate market, the Bank Board's examinations showed that much of the profit had been imaginary.

The burgeoning number of savings and loan failures in Texas and elsewhere placed enormous strains on the FSLIC fund, which insures deposits in federal and state-chartered savings and loan associations. Under federal law, when FSLIC places an insolvent federally-insured savings association into a receivership, it must pay off the insured depositors almost immediately. Therefore, each closure requires FSLIC to make an immediate cash outlay approximately equal to the insolvent association's deposits. As FSLIC's reserves dwindled, it lost the financial ability to close even the most insolvent associations. In late 1986, approximately 250 associations required FSLIC assistance. Of these, FSLIC considered 130 associations, with stated assets of $47.6 billion, to be severely troubled.

In response to this crisis, in May 1986 a bill was introduced in the House of Representatives which provided, among other items, $15 billion in new funds for FSLIC without the use of general revenues. The bill was referred to the House Committee on Banking, Finance and Urban Affairs, which passed the bill by a vote of 47 to 1 without significant amendment. The bill was placed on the suspension calendar and was scheduled for consideration by the full House on Monday, September 29, 1986. (The suspension calendar is reserved for bills engendering little controversy.) However, Wright removed it from the calendar prior to its consideration. The bill was rescheduled on October 6, 1986 and on October 7, 1986 it passed the House under suspension of the rules. However, because the Senate's version of the bill contained controversial provisions, insufficient time remained to resolve the differences before Congress adjourned on October 18, 1986.

On January 6, 1987, substantially the same bill was reintroduced in the new Congress. The Banking Committee held hearings later in January as Members began increasingly to pass along complaints about regulators' "arbitrary" actions in closing down savings and loan associations. For the first time, "forbearance" provisions, *i.e.*, provisions restricting FSLIC's ability to close associations, were discussed as part of the bill. Wright supported these forbearance provisions as well as a reduction in the recapitalization amount to $5 billion. The Bank Board believed the forbearance provisions and the reduced recapitalization amount would severely hamper its ability to deal with the crisis. Although Wright later supported $15 billion, the House passed the recapitalization bill at the $5 billion level. The

amount was raised to $10.8 billion in conference and the forbearance provisions were weakened. The bill was signed into law in August 1987.

During this 1986-1987 period, Wright intervened with the Bank Board on behalf of four Texas businessmen who were deeply embroiled in the savings and loan crisis. One of these businessmen, Craig Hall, met with Wright on September 2, 1986 and informed him that the Bank Board was out of control and taking action against him which would have serious repercussions in the Dallas and Texas communities.

Hall is a Dallas-based real estate syndicator and one of the largest owners of real estate in Texas. Once Hall determined that the worsening Texas economy threatened his ability to remain current on loans held by numerous savings and loan associations, he sought assistance from the Bank Board and District Banks in restructuring his debts held by FSLIC-controlled savings and loans.

Although the Bank Board was not adverse to the concept of a global restructuring, it believed it could not legally assume the role of negotiator for those associations involved in the Hall restructuring which were already under FSLIC control. Hall was required to negotiate individual agreements with the Special Representatives of each FSLIC-controlled association.

Hall was able to reach agreement with all but one FSLIC-controlled association, the Westwood Savings and Loan of Los Angeles, which held approximately $200 million in Hall loans. Westwood's Bank Board-appointed Special Representative, Scott Schultz, and its outside counsel refused to accept conditions to the restructuring which were adverse to Westwood's interests and decided to foreclose on Hall's properties and allow him to go bankrupt rather than accept his restructuring plan.

At the onset of foreclosure proceedings, the Bank Board and District Banks ceased communication with Hall. Hall told Wright in their September 2, 1986 meeting that he had received no response to his efforts to re-establish communication with the Bank Board and District Banks. Soon after meeting with Hall, Wright called a meeting in his office with several Texas congressman and representatives of the Bank Board, including its Chairman, Edwin Gray. Although Hall may have been mentioned, the meeting was generally devoted to passing along reports that Bank Board regulators were mistreating Texas savings and loans.

Wright called Gray shortly after the meeting to complain about Westwood's Special Representative, Scott Schultz, whom Wright said

was not as flexible or understanding as he might be. Wright asked if there was not anything Gray could do about that situation. Wright never discussed the merits of the Bank Board's position and he rebuffed the Bank Board's offer to explain its position in the Hall matter.

Gray decided to further investigate the Hall matter. On Friday, September 26, 1986, Bank Board Chief of Staff Shannon Fairbanks went to a meeting with Hall and his California savings and loan creditors. On that day, Hall learned that because of Wright's interest in Hall's situation, Wright had placed a "hold" on the FSLIC recapitalization bill which had been scheduled for consideration by the House on the following Monday.

Gray and Fairbanks thus determined that if they were to obtain a recapitalization bill, they would have to facilitate a restructuring of Hall's loans. On September 29, 1986, Gray replaced Scott Schultz with another Special Representative who was instructed to disregard outside counsel's legal advice and determine if there was any way to build a responsible economic case in support of re-negotiating Hall's loans. Following Gray's removal of Schultz, and Gray's later assurances to Wright that the Bank Board would not treat Texas savings and loans unfairly, the bill was returned to the House calendar. It was passed by the full House under a suspension of the rules on October 7, 1986.

Wright did not merely "urge prompt consideration" of or "express judgment" on the Hall matter as specifically permitted in the Select Committee on Ethics' Advisory Opinion No. 1. [Ethics Manual, p. 156.] He removed the recapitalization bill from House consideration in order to pressure the Bank Board into changing its resolution of the Hall matter regardless of the merits of the Bank Board's position. Such pressure is a violation of House Rule XLIII, clause 1, as interpreted by Advisory Opinion No. 1.

On October 6, 1986, Wright met with J. Scott Mann III, an Austin, Texas savings and loan operator who complained that the Bank Board was discriminating against Texas savings and loan associations and that a recapitalized FSLIC would close large numbers of Texas institutions. Mann also set forth his complaints in a letter of October 7, 1986 which Wright forwarded to Gray asking that he check on the situations described. Gray investigated Mann's charges and reported to Wright that Mann's CreditBanc Savings had committed serious regulatory violations and was in a precarious financial condition. Wright took no further action. Thus Wright's request that Gray check on Mann's charges is within the guidelines of Advisory Opinion No. 1 which expressly provides that it is appropriate for a Member to request information or a status report.

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In early November 1986, Wright telephoned Gray regarding Wright's "friend" Thomas M. Gaubert of Independent American Savings Association, a Texas-chartered association with its main office in Irving, Texas. Gaubert was also a contributor to the Democratic Party and Treasurer of the Democratic Congressional Campaign Committee.

In January 1986, Gaubert had been permanently removed from Independent American and prohibited from operating any FSLIC-insured association. Gaubert had been involved in questionable transactions at an Iowa savings and loan as well as regulatory violations and unsafe or unsound practices at Independent American. As of November 30, 1986, Independent American had a negative net worth of $454 million. Although Gaubert entered into a written agreement removing him from the industry, he later argued that he had been misled and treated unfairly and, therefore, that the agreement was invalid.

Wright asked Gray to meet with Gaubert personally in order to get Gaubert's side of the story. Gray protested that Bank Board rules prohibit the Chairman from meeting with parties to actions before the Board. Despite Gray's protests, Wright insisted that Gray meet with Gaubert; Gray did so as an accommodation to Wright. Following his meeting with Gaubert, Gray made the unprecedented decision in January or February 1987 to appoint an independent counsel (selected by counsel for Gaubert) to determine whether the Bank Board had in fact wrongfully removed Gaubert from Independent American. Gray testified that but for his perception of Wright's influence on the recapitalization bill, he would not have appointed independent counsel. Independent counsel ultimately determined that the Bank Board had not violated any statutes or regulations in its treatment of Gaubert, although it did note some instances of improper or unfair behavior, none of which justified Gaubert's claim that he was removed improperly.

Nonetheless, despite the significant concessions made by Gray, at a meeting with officials of the Bank Board and FHLB-Dallas on February 10, 1987 in Wright's office, Wright made it plain that he viewed the outcome of the Gaubert matter to have been extremely unsatisfactory. The clear inference is that Wright was not simply seeking impartial consideration of Gaubert's claim, but a change in the Bank Board's regulatory response to Gaubert. Such use of Wright's influence is a violation of House Rule XLIII, clause 1 as interpreted by Advisory Opinion No. 1.

In December 1986, Congressman Tony Coelho called Wright's aide, John Mack, and requested Wright's assistance on behalf of Don R. Dixon of Vernon Savings and Loan in Dallas and Vernon, Texas. Coelho informed Mack that the FSLIC was going to shut down Vernon that day. He asked that Wright attempt to get Dixon a grace period as Dixon said he had a willing buyer.

Mack testified that following his conversation with Coelho, he told Wright of Dixon's problem. Wright telephoned Gray and asked him whether Vernon was being closed down. Gray responded that closing an institution requires a Bank Board meeting and he had not authorized any such meeting. Wright asked Gray to find out if anything was happening and to call John Mack with the information. Gray later informed Mack that Vernon was not being "shut down," but the FHLB-Dallas supervisory agents were going to seek a "consent to merger agreement" from Vernon's directors at the end of December 1986. Gray explained that such an agreement would not affect the association's ability to find an investor and that Mack should let the Bank Board know if an investor were found. Ultimately, no investor was found and Vernon was placed in receivership in March 1987.

In this instance, since Wright merely asked for information from the Bank Board, no violation occurred.

In November 1986, Wright again called Gray to express his concern about the way Texas institutions were being treated by the Bank Board. He brought up the subject of H. Joe Selby, the Director of Regulatory Affairs at the FHLB-Dallas and formerly the acting Comptroller of the Currency, who had the reputation of being a tough regulator and who had been brought into the savings and loan crisis by Gray to implement the Bank Board's supervisory and regulatory response. Because of his hardline posture, Selby was feared and distrusted by many in the thrift industry.

Wright told Gray he understood from unnamed sources that Selby was a homosexual who was sending all of FHLB-Dallas' work to a "ring of homosexual lawyers in Texas." Wright asked Gray if there was anything Gray could do to "get rid of" Selby. Gray refused Wright's request and defended Selby as a highly competent regulator doing the tough job expected of him.

Although unsuccessful, Wright's attempt to destroy Selby's career based upon such an accusation violates House Rule XLIII, clause 1, because it does not reflect creditably on the House.

Similarly, when in late 1987 or early 1988 Wright's aide, Phil Duncan, called Carl Hoyle, the Bank Board's Director of Congressional Affairs and said he wanted William Black fired from the staff of the FHLB-San Francisco, such a request indirectly from Wright is also a violation of House Rule XLIII, clause 1.

Thus, as discussed in full in Section III. F. of this Report, Wright committed four violations of House Rule XLIII, clause 1, as interpreted by Advisory Opinion No. 1.

III. FACTUAL ANALYSIS

A. Wright's Gas Well Investments With the Moncrief Family

1. Allegations and Investigation

The Complaint alleges that in violation of House Rules, Wright accepted the opportunity to invest in certain potentially lucrative east-Texas gas wells as compensation for his extraordinary efforts on behalf of the Neptune Oil Company ("Neptune") and its principal, Richard Moncrief. It further charges that Moncrief sought access to and influence with high officials of the American and Egyptian governments in order to affect favorably Neptune's disputed oil exploration rights in the Gulf of Suez.

In investigating this allegation, we examined Wright's testimony; and obtained the testimony of eight witnesses, including: Richard Moncrief and W. A. Moncrief, Jr., of Fort Worth's Moncrief Oil Company; Duane McDaniel, a Moncrief Oil employee; Sam Allen, a partner in Dallas Exploration, Inc., a Dallas-based oil and gas exploration company; Dean O. Cochran, formerly a vice president of Continental National Bank in Fort Worth; Robert Gerrard, formerly the Chairman of Continental National Bank in Fort Worth; Alfred L. Atherton, formerly U.S. Ambassador-at-Large to the Egyptian-Israeli peace negotiations at Camp David and the subsequent treaty negotiations; and Donald Hockaday, an independent consultant on the oil and gas industry.[3] In addition to the testimony, we also obtained documents from Continental National Bank; Dean O. Cochran; Moncrief Oil; Dallas Exploration; Texas Oil & Gas Company; Grace Petroleum Company; and the U.S. Department of State.

We developed facts regarding Neptune's disputed oil rights and Wright's acceptance of the opportunity to invest in gas wells with the Moncrief family. In particular, we inquired into (1) Wright's intercession with U.S. and Egyptian officials on Neptune's behalf; (2) Wright's relationship with the Moncrief family; and (3) the nature of Wright's investments in and financing of certain east-Texas gas wells.

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[3] Mr. Hockaday is an independent operator and consultant with the Houston office of the Doroil Corporation. He has been in the oil and gas business since graduation from the University of Texas in 1947. From 1948 through 1972, Mr. Hockaday was affiliated with the Kewanee Oil Company beginning as a drilling and production engineer and becoming Vice President for Exploration in 1969. In 1973, he moved to the Sunlite Oil Company where he was Executive Vice President and Consultant until 1980 when he joined the Doroil Corporation. He has been actively involved in the purchase and sale of exploratory acreage and production properties. He drills wells for his own account as his own operator and he is an advisor and consultant to corporations and individuals.

2. Applicable Standards of Conduct

House Rule XLIII, clause 3, provides:

> A member, officer, or employee of the House of Representatives shall receive no compensation nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

Thus a Member cannot receive compensation in exchange for using his influence as a Member of Congress. Moreover, consideration 5 of the Code of Ethics for Government Service[4] provides that a Member should:

> [N]ever discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits *under circumstances which might be construed by reasonable persons as influencing the performance of his government duties.*

Therefore, even where no "compensation" has been paid to a Member, he cannot dispense "special favors" and cannot receive "favors or benefits" which may reasonably appear to have influenced the performance of his government duties.

Furthermore, House Rule XLIII, clause 1, provides:

> A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives.

In interpreting this clause, the Select Committee on Ethics noted that it had been included in the Code of Official Conduct to deal with "flagrant" violations of the law that reflect on "Congress as a whole" and that might otherwise go unpunished. [Ethics Manual For Members, Officers, and Employees of the U.S. House of Representatives, 98th Congress, Second Session ("Ethics Manual"), p. 3.] In practice, although many of the Committee's actions under clause 1 have dealt with conduct in violation of various statutes, clause 1 has also been used in matters where no statutory violation has been cited. [Ethics Manual, pp. 4-6.] In fact, this Committee has previously stated that a Congressman's receipt of favors or benefits in violation of consideration 5 of the Code of Ethics for Government Service may also be a violation of House Rule XLIII, clause 1. [Ethics Manual, p. 5.]

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[4] The Committee has identified the Code of Ethics for Government Service as a general ethical standard recognized by the House. [*See* Ethics Manual pp. 10-11.]

House Rule XLIII, clause 4, provides:

> A Member, Officer, or employee of the House of Representatives shall not accept gifts (other than personal hospitality of an individual or with a fair market value of $50 or less) in any calendar year aggregating $100 or more in value, directly or indirectly, *from any person* (other than from a relative of his) *having a direct interest in legislation before the Congress*. . . .

Thus when a "gift" is received from a person with a direct interest in legislation, the receipt of that gift is a violation of House Ethics Rules even where it was not meant to compensate for any official act and it might not otherwise appear that the gift has influenced the Member's performance of his government duties.

For purposes of this Rule, "gift" has been defined as:

> A payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, *unless consideration of equal or greater value is received by the donor.*

[House Select Committee on Ethics, Advisory Opinion No. 7, Ethics Manual, p. 164.]

For purposes of this Rule, those with a "direct interest in legislation before Congress" include lobbyists and, to some extent, non-lobbyists as well:

> Members should not accept gifts aggregating over $100 in value from any individual or organization that the Member knows has a distinct or special interest in influencing or affecting the federal legislative process which sets such individual or organization apart from the general public.

[House Select Committee on Ethics, Advisory Opinion No. 10, Ethics Manual, p. 171.]

Advisory Opinion No. 10 also defines interest in "legislation before Congress" broadly to include an "ongoing special interest in affecting the legislative process." [Ethics Manual, p. 174.] The Select Committee also rejected a narrow construction of the phrase which would limit "before Congress" only to times when Congress is in session or to a particular piece of legislation. [*Id.*]

Finally, the Ethics in Government Act requires that Members disclose on their annual Financial Disclosure Statements the identity

of *all* gifts aggregating $100 or more and received from *any* source other than a relative. [2 U.S.C. § 702(a)(2)(B).][3]

3. Factual Development and Conclusions

a. Wright's Relationship With the Moncrief Family

Wright obtained his interest in several east-Texas gas wells from W. A. ("Monty") Moncrief, the late patriarch of a well-known Fort Worth, Texas oil family. The Moncrief family has been in the oil business since 1935 when Monty Moncrief began Montex Drilling Company, better known today as "Moncrief Oil." [R. Moncrief Tr. 7-14; W. A. Moncrief Tr. 10.] Monty Moncrief's son, W. A. ("Tex") Moncrief, Jr., joined the business in 1942 and Tex Moncrief's sons Richard, Tom, Charles and Bill later also joined the family business. [*Id.*]

Moncrief Oil is a family-run company of approximately 80 employees which performs all the operational aspects of oil and gas production such as leasing land to be drilled, hiring drilling contractors, and performing seismic surveys. All the costs of operating Moncrief Oil are borne by the Moncrief family members who each individually act as independent, unincorporated businesses for the purpose of investing in the drilling of oil and gas wells and financing Moncrief Oil's operations. [*Id.*]

Monty and Tex Moncrief first met Wright in 1954 when he was first elected to Congress. [W. A. Moncrief Tr. 11.] Tex Moncrief has known him "casually" ever since. [W. A. Moncrief Tr. 11.] Monty Moncrief visited Washington, D.C. frequently in connection with his lobbying activities on behalf of the Independent Petroleum Association of America and its interests in legislation relating to the domestic oil and gas industry.[4] [R. Moncrief Tr. 17-18.] However, he was not a regular visitor to Wright's office. [W. A. Moncrief Tr. 29.]

After 1970, Richard Moncrief began meeting regularly with Wright and other legislators in Washington regarding tax bills affecting independent oil producers. [R. Moncrief Tr. 15, 296, 321-22.] Beginning in or about 1975, Wright also occasionally attended luncheon meetings in the Moncrief Oil dining room in Fort Worth to discuss issues of interest to the nation and particularly to oil and gas

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[3] House Rule XLIV, clause 2, declares the provisions of Title I of the Ethics in Government Act, insofar as they apply to Members of the House, to be rules of the House as well. Therefore, references in this Report to Rule XLIV include references to the Act.

[4] Although Monty Moncrief performed lobbying activities for the Independent Petroleum Association, Mr. Moncrief was apparently not a registered lobbyist for that association. [R. Moncrief Tr. 18, 296.]

producers. [W. A. Moncrief Tr. 35-36.] Tex Moncrief recalls that Wright had lunch with the Moncriefs once a year in their Fort Worth office, although he may not have attended every year. [W. A. Moncrief Tr. 36.]

Tex Moncrief also testified that neither he nor his father had a personal relationship with Wright outside these occasional meetings in Washington and Fort Worth. [W. A. Moncrief Tr. 26-27.] He said they liked Wright, but they never socialized with him. [*Id.*] He was not considered a "family friend." [W. A. Moncrief Tr. 35.]

Although both Wright and Richard Moncrief testified regarding their own friendship [Wright Tr. 18; R. Moncrief Tr. 299], Richard Moncrief qualified his testimony by saying that he and Wright were the kind of friends who only saw one another "regarding the oil industry." [R. Moncrief Tr. 309.] A close personal relationship between Wright and any member of the Moncrief family has not existed at any time relevant to the allegations.

b. Moncrief Interests in Middle East Oil Exploration

In 1975, the Neptune Oil Company ("Neptune"), a Panamanian corporation 60 percent owned by Richard Moncrief,[7] entered into an oil and gas exploration agreement with the Israeli government to develop and operate offshore oil fields in the Israeli-occupied territory in the Gulf of Suez. [R. Moncrief Tr. 27.] Under the agreement with Israel, the Israeli government was to receive 75 percent of any oil Neptune discovered. Neptune was to receive 25 percent of the oil in return for fronting all costs for the exploration work. [R. Moncrief Tr. 33.] Israel's development of the occupied Suez is arguably a violation of the Geneva Convention, which prohibits the exploitation of territory occupied as a result of war. [Atherton Tr. 10.]

In 1976, after Neptune had spent $3 million drilling what proved to be a dry hole, the Superior Oil Company ("Superior") of Houston bought Neptune, including 85 percent of Neptune's oil rights, and in turn became obligated to finance the drilling of additional wells. [R. Moncrief Tr. 37.] The remaining 15 percent of Neptune's oil rights was transferred to Regarde Company, formed and wholly owned by the original owners of Neptune, including Richard Moncrief.[8] [*Id.*]

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[7] Richard Moncrief owned 100 percent of Deepwater, Inc., a Panamanian corporation which owned 60 percent of Neptune. The remaining 40 percent of Neptune was owned by five independent oil producers from Fort Worth who were friends of Richard Moncrief. [R. Moncrief Tr. 28-30.]

[8] Regarde Company then had 3.75 percent of the total oil rights (15 percent of Neptune's 25 percent interest). Since Richard Moncrief owned 60 percent of Regarde Company, his interest in the oil rights was then only 2.25 percent of the whole. His costs were apparently limited to $1,800,000 (60 percent of the $3,000,000 already expended by Neptune prior to its acquisition by Superior).

In 1977, after spending approximately $35 million, Neptune discovered oil in a region known as the Alma Field. [R. Moncrief Tr. 35, 43-44.] Under the agreement, the Israeli government arranged a $100 million loan to Neptune from an Israeli bank to finance the operation and further development of the oil field. [R. Moncrief Tr. 38.] The Alma Field ultimately produced approximately 40,000 barrels of oil a day—equivalent to 25 percent of Israel's daily requirements. [R. Moncrief Tr. 44-45.]

As a result of the September 1978 Camp David accords and the peace treaty signed in March 1979, Israel was obligated to return control of the Israeli-occupied Sinai Peninsula and offshore territory to Egypt relinquishing all rights to the oil fields without compensation. [Atherton Tr. 6; R. Moncrief Tr. 46-49; Exhibit A-1.] Although not specifically addressed in the Camp David accords or in the peace treaty, Egypt designated Amoco Oil of Indiana, which had previously been licensed by Egypt in that same area, to take over the oil exploration project, including the producing wells in the Alma Field. [Atherton Tr. 6-7; R. Moncrief Tr. 47-49; Exhibit A-1.] Consequently, Neptune not only stood to lose its expected profit from the project, but would also be unable to recoup a substantial part of its investment. [R. Moncrief Aff. ¶¶ 5-7; Wright Tr. 10-12.]

Neptune met with Amoco and made attempts to meet with the Egyptian government to discuss a potential joint venture, but to no avail. [R. Moncrief Tr. 47.] In fact, Amoco filed suit against Neptune to enforce its rights under the Egyptian leases.[9] Officials in the U.S. Embassy in Tel Aviv believed that Amoco wanted to "keep Neptune out of the Gulf even if dealing with Neptune would save Amoco money." [Exhibit A-2.] The Egyptian government refused even to speak with Neptune, taking the position that Israel's contract with Neptune had been an improper exercise of authority by an occupying power under the Geneva Convention and that Israel had thus wrongfully prevented Amoco from developing the oil fields. [Atherton Tr. 7.]

c. Wright's Intervention for Moncrief Interests

In October or November 1978, Richard Moncrief asked Wright (then the Majority Leader), to intervene on Neptune's behalf. [R. Moncrief Tr. 50-58; R. Moncrief Aff. ¶6.] In at least two meetings with Wright held in his Washington office in November 1978 and on February 5, 1979, and in numerous phone conversations with Wright from November 1978 through April 1979, Richard

[9] The suit was apparently voluntarily dismissed after the peace treaty was signed. [R. Moncrief Tr. 122-23.]

Moncrief and principals of Superior Oil and Regarde Company outlined Neptune's situation and their proposal for a joint venture with Amoco in the Gulf of Suez. [R. Moncrief Tr. 53-59; Exhibit A-3.] Neptune proposed to turn over to Egypt and Amoco the benefit of all the geological and other technical work Neptune had already done in the Gulf in exchange for some form of partnership arrangement, under Egyptian sovereignty, which would permit continued Israeli/Neptune participation in the production of oil in the region. [R. Moncrief Tr. 55-58.] According to Richard Moncrief, such an arrangement would have enabled Egypt to produce oil from the area at lower cost and at an earlier date than it would otherwise have been able to achieve working solely with Amoco. [*Id.*] Thus Egypt would benefit while allowing Neptune the opportunity to recoup its investment and giving Israel a secure source of oil. [R. Moncrief Tr. 55-56; Exhibit A-3.]

One of the participants in these November 1978 and February 1979 meetings was Alfred L. ("Roy") Atherton, then U.S. Ambassador-at-Large for the Egyptian-Israeli treaty negotiations. [R. Moncrief Tr. 53-54; Atherton Tr. 5; Exhibit A-3.] Atherton attended the meetings at Wright's request. [Atherton Tr. 11.] He pointed out from the outset that the State Department would not try to persuade the Egyptians to change their position because the United States agreed that Israel's concession to Neptune was in violation of the Geneva Convention. [Atherton Tr. 12.] However, he said that the State Department was not adverse to Egypt and Israel negotiating a practical solution to the oil concession problem on their own. [Atherton Tr. 12-13.] Although after the treaty was signed the State Department helped arrange a meeting for Neptune with Egyptian government officials, the State Department otherwise "kept ... scrupulously out of" the dispute. [Atherton Tr. 15-16; Exhibit A-4.]

Notwithstanding Egypt's and the State Department's positions, on March 19, 1979, Wright wrote Secretary of State Cyrus Vance strongly urging his support for Neptune.[10] [Exhibit A-5.] On March 27, 1979, during an official reception, Wright personally spoke to Egyptian President Sadat and handed him a letter requesting his attention to the Neptune matter. [Exhibit A-6; R. Moncrief Tr. 114-15.] On April 3, 1979, Wright also cabled Egyptian Prime Minister Mustafa Khalil in Cairo to arrange a meeting there for Richard Moncrief. [Exhibit A-7.] On April 8, 1979, Paul McGowan, an attorney representing Neptune, informed the State Department that "Wright will not let up on this—if the response to [Wright's

[10] Wright testified that he also called Mr. Vance and called Egyptian Ambassador Ashraf Ghorbal. [Wright Tr. 13-14.]

letter to Vance] is negative, there will be several more go-arounds." [Exhibit A-8.]

Although ultimately Israel and Neptune were not permitted to continue their efforts in the Sinai and the Gulf, during the interim period before Israel returned the occupied territory to Egypt, Neptune did recoup its investment and, in fact, made a $35 million profit on its production due to rising oil prices.[11] [R. Moncrief Tr. 151.] In addition, Neptune was able to negotiate a $5 million payment from the Egyptian government styled as a purchase of Neptune's equipment in the Sinai. [R. Moncrief Tr. 149.]

(1) Analysis and Conclusions

Wright's intervention on behalf of Neptune, a constituent, while exuberant, nevertheless appears proper. Neptune at the least initially faced the prospect of a serious economic loss which it believed it could not prevent without the assistance of its government. A citizen seeking the assistance of his Congressman to bring a problem to the attention of those who may be in the best position to resolve it equitably is exercising a constitutional right. [U.S. Const. amend. I; Advisory Opinion No. 1, Committee on Standards of Official Conduct, January 26, 1970.[12]] Moreover, a Congressman is encouraged to act as a "go-between" or "conduit" between his constituents and agencies or officials of the Federal Government. [Ethics Manual, p. 37.] In fact, the late Senator Paul Douglas concluded that there is "a sound ethical basis for legislators to represent the interests of constituents and other citizens in their dealings with administrative officials and bodies." [Ethics Manual, p. 37, *quoting* P. Douglas, *Ethics in Government*, 87 (1952).]

In this matter, Wright met with Monty and Richard Moncrief and others to learn of Neptune's problem and proposed solution, arranged meetings for his constituents with Ambassador Atherton in Washington and Egyptian Prime Minister Khalil in Cairo, and made phone calls and wrote letters to Secretary of State Cyrus Vance, Egyptian Ambassador Ashraf Ghorbal, and Egyptian President Anwar Sadat. Each of these actions appears to be well within the spirit and letter of this Committee's Advisory Opinion No. 1, which offers guidelines to Members regarding proper communication with an executive or independent agency.

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[11] Wright was incorrect when he testified before the Committee on September 14, 1988 that Neptune lost its investment. [Wright Tr. 15.]

[12] The parameters of Advisory Opinion No. 1 are discussed in full in Section III. F. of this Report.

Although Wright himself characterized his actions for his constituents as going "further than I do on some things" [Wright Tr. 15.], and a State Department memorandum indicates that "Wright will not let up on this" [Exhibit A-8], Ambassador Atherton testified that, in fact, Wright's role at meetings Atherton attended was minimal and for the most part limited to introductions. "It seemed to me normal for a Member of Congress to be seeking for constituents of his to have an opportunity to make their case, and that is basically what it was." [Atherton Tr. 12.] Furthermore, the letters to Cyrus Vance and President Sadat merely expressed Wright's judgment on the matter and urged prompt, fair consideration of Neptune's plight. [Exhibits A-5, A-6.]

We believe that Wright acted within the House ethical guidelines set forth in Advisory Opinion No. 1 when he intervened with the State Department and Egyptian officials on behalf of Neptune Oil Company. We do not believe the actions taken on Neptune's behalf under the circumstances were special favors or privileges afforded Neptune in violation of consideration 5 of the Code of Ethics for Government Service.

d. Wright's Gas Well Interests

(1) The Whatley Purchase

At precisely the same time Wright was intervening for Neptune, Monty Moncrief offered Wright the opportunity to purchase part of the Moncrief interest in the Whatley No. 1 well, an east-Texas gas well located in Freestone County. [R. Moncrief Tr. 68-69; R. Moncrief Aff. ¶ 8-9.] This was the first time Moncrief had ever invited Wright to invest in a Moncrief well. [W. A. Moncrief, Jr. Tr. 18.]

Monty Moncrief obtained his interest in the Whatley well through a joint venture partnership with Dallas Exploration, Inc., a gas and oil exploration company in Dallas, Texas, which explored drilling prospects in east Texas and Louisiana. [Allen Tr. 6; Exhibit A-9.] In exchange for financing Dallas Exploration's overhead, each joint venture partner had an option to acquire an interest in any prospects Dallas Exploration would develop.[13] [Allen Tr. 10-11; Exhibit A-9.]

Dallas Exploration acquired its interest in the Whatley well from the Texas Oil & Gas Company ("TXO") by agreement to pay two-thirds of the drilling costs for a one-half interest in the income from the well, a standard industry mark-up. [Hockaday Tr. 20-21.] Dallas

[13] In general, the Joint Venture Agreement gave Monty Moncrief an option to take one-eighth of Dallas Exploration's interest in any well prospect developed and acquired through joint venture financing. That interest could vary depending upon the extent of the participation of the other joint venturers. [Exhibit A-9, pp. 8-9.]

Exploration passed this mark-up on to the joint venturers and additionally charged a management fee for its services. [Exhibit A-9.]

TXO commenced drilling of the Whatley well on February 2, 1979. [Exhibit A-10.] When Sam Allen of Dallas Exploration notified Monty Moncrief of the Whatley well prospect on February 16, 1979, Allen told him that he was confident that the Whatley well would be a good "bread and butter deal," *i.e.*, "one in which you would rarely lose money on an individual well, but you would not often make an appreciable sum of money. It was a relatively safe play." [Allen Tr. 27; Exhibit A-11.]

Allen testified that normally, in a "bread and butter" well deal, an investor would recoup his investment in two or two-and-a-half years. The profit would then gradually pay out over a fifteen to twenty year period. [Allen Tr. 28.] Based upon the Dallas Exploration projections, Richard Moncrief estimated that the profit from the Whatley well would ultimately be about three or four to one. [Exhibit A-12.] Thus, an investor with $20,000 for drilling costs could expect a full return of that investment within two-and-one-half years and an additional $60,000 to $80,000 paid out gradually over 15 to 20 years.

Allen testified that in 1979 he knew that Monty Moncrief was not personally interested in such small "bread and butter" deals. "He was throwing the long ball and he wanted to hit the home runs, but he would take a lot of these type deals to put in his grandchildren's trust and things of that nature." [Allen Tr. 30; Hockaday Tr. 31-32.]

Tex Moncrief testified that discussion of the Whatley well came up in Monty Moncrief's office just prior to one of their occasional luncheons with Wright, who was also present during the office discussion. [W. A. Moncrief, Jr. Tr. 12.] Although neither Monty nor Tex Moncrief were interested in the Whatley deal, Richard Moncrief wanted to take part of the interest and suggested that his grandfather "could put some of the other . . . grandchildren in the deal." [W. A. Moncrief, Jr. Tr. 12-13.] Richard and Monty Moncrief then asked Wright if he would also like "to take a little interest in this deal." [W. A. Moncrief, Jr. Tr. 13; R. Moncrief Tr. 77.] According to Tex Moncrief, Monty Moncrief explained: "It is not the type of deal that Tex and I are looking for, but it is a reasonable deal .... The chances are the thing will make a well and pay out and make a little money." [W. A. Moncrief, Jr. Tr. 13.] Wright apparently indicated at that time that he would consider investing in the well, subject to a "self-imposed limit of about $20,000." [R. Moncrief Tr. 73; Exhibit A-13; Wright Tr. 18-19.]

Tex Moncrief characterized his father's decisions to let outsiders into a deal as "accidental." "In other words, if somebody was sitting there like Wright was sitting there, he might get it." [W. A. Moncrief, Jr. Tr. 26.] He also testified that people outside the family were allowed in a deal only when the Moncriefs did not want the deal entirely for themselves. "[I]n general, where people would come in with us it would be something that's just . . . an average deal that was probably presented to us by somebody else as compared to us generating the deal ourselves." [W. A. Moncrief, Jr. Tr. 43.]

Apparently, it was not unusual for Monty Moncrief to take people outside his immediate family in on oil and gas well deals. In addition to long-time Moncrief Oil employees, Monty Moncrief also sometimes took in good friends such as Royal Hogan (Ben Hogan's brother), Bob Hope and Bing Crosby, with whom Monty Moncrief played golf. [W. A. Moncrief, Jr. Tr. 24-25; McDaniel Tr. 16-17.] However, Monty Moncrief had never before offered an interest in a well to a politician with whom he had neither a family nor any other close personal relationship.[14] [R. Moncrief Tr. 71.]

On February 22, 1979, Monty Moncrief wrote to Wright formally offering him an interest in the Whatley well. [Exhibit A-13; Wright Tr. 19.] The letter stated that 50 percent of the Moncrief interest would be going to Monty Moncrief's grandsons Richard and Tom. In addition, three long-time Moncrief Oil employees were each to receive 10 percent, leaving a 20-percent interest "reserved" for Wright at about his $20,000 self-imposed limit. [R. Moncrief Tr. 83; Exhibit A-13.] Richard Moncrief testified that on writing the letter, his grandfather "obviously wanted Jim to know that there were some Moncriefs in it and certainly some people that we felt very responsible toward." [R. Moncrief Tr. 83.] By letter of February 26, 1979, Wright accepted the Moncrief offer and agreed to pay his share of the costs "whatever the result may be." [Exhibit A-14.]

Dallas Exploration first billed Monty Moncrief for his drilling costs by invoices dated May 21 and May 25, 1979 totalling $98,944.68. [Exhibit A-15, pp. 396, 397.] As was his custom, Moncrief in turn billed Wright by invoice dated June 15, 1979, for $19,788.93, 20 percent of the Moncrief costs.[15] [Exhibit A-15, p. 395.] Wright issued

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[14] Richard Moncrief testified that his grandfather had once offered an interest to his cousin Michael Moncrief, who was a Tarrant County Judge. [R. Moncrief Tr. 71.]

[15] The costs passed on to Wright included twenty percent of all charges to Moncrief included in the Dallas Exploration invoice. Those costs did not include any portion of the Dallas Exploration overhead which Monty Moncrief paid as part of the joint venture agreement.

a check to Moncrief Oil on June 26, 1979 in full payment of the June 15, 1979 invoice.[16] [Exhibit A-15, p. 398.]

Drilling of the Whatley well was actually completed on July 11, 1979. [Exhibit A-20.] At that time, although gas had been discovered, it was clear that the well's output would be substantially less than had been anticipated.[17] [Hockaday Aff. ¶ 2.] "It made what I would call a mediocre well." [W. A. Moncrief Tr., Jr. 16.][18]

(a) Analysis and Conclusions

Wright's purchase of an interest in the Whatley well does not violate House Rule XLIII, clause 4, because the opportunity to purchase the Whatley well is not a "gift." Although Monty Moncrief did not ordinarily offer the opportunity to invest in family oil and gas deals to individuals outside the Moncrief family, employees, and close friends, it appears that the Whatley investment opportunity was a relatively small "bread and butter" deal of a type equally available to Wright through other industry sources at about the same cost. "[T]here are a number of . . . operators that you could have picked up interest[s] from in wells of equal quality as this, of equal price, or maybe better." [Hockaday Tr. 42-43.] For the same reason, we do not consider the Whatley interest to have been a "favor or benefit" under consideration 5 of the Code of Ethics for Government Service.

Additionally, Wright committed in writing to pay for his interest in the Whatley well on February 26, 1979 and obtained a bank loan in May 1979, before gas had been discovered in the well. Thus, although it was predicted at the outset that the well would be at least moderately successful, it was not *certain* at the time Wright committed to pay whether the well would be a commercial success or a dry hole. Stated differently, there was a risk of losing his investment.

Secondly, Wright's purchase of the Whatley well was under conditions from which it is impossible to conclude that the opportunity to

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[16] Wright paid for the Whatley interest with the proceeds of a $20,000, 180-day, unsecured loan also issued on June 26, 1979 by Continental National Bank and renewed periodically through March 1984. [Exhibits A-16, A-17, A-18.] By its terms, the loan was to be repaid from 75 percent of the monthly well income, applied first to interest and then to principal. [Exhibit A-19.] Unpaid interest was to accrue and would be due at maturity. [*Id.*] In the event there was no income for any month, no payment would be due, but interest would continue to accrue. [*Id.*] The remaining 25 percent of the income could be used to pay monthly operating expenses. Thus, so long as the well produced income, it would virtually pay for itself.

[17] Although some gas had apparently been discovered in April 1979, drilling continued until July 11, 1979 in an effort to increase production. [Exhibit 10.]

[18] In fact, Sam Allen of Dallas Exploration testified that to-date the well has still not produced enough to return the original investment. "Our investors have only gotten two-thirds of their original investment back, so it has been a very poor investment. It is not one of our shining stars." [Allen Tr. 37.]

invest in the well was intended or perceived as "compensation" for Wright's efforts on behalf of Neptune Oil. Compensation is defined as "something that constitutes an equivalent or recompense." [*Webster's Ninth New Collegiate Dictionary*, 1988.] Since there is no value in the mere opportunity to purchase through Moncrief that which is equally available from other sources, that opportunity cannot be considered the equivalent for services of value.

(2) The Williams No. 1 Purchase

Monty Moncrief also had an interest in a second east-Texas gas well, the L. D. Williams No. 1 well, which he obtained in February 1979 through his joint venture agreement with Dallas Exploration. [Exhibits A-21, A-22, pp. 335-337.] Drilling on the Williams No. 1 well commenced in March 1979 and was completed when gas was discovered on June 27, 1979. [Allen Tr. 56; Exhibit A-20.]

Monty Moncrief offered to sell Wright and Wright agreed to purchase an interest in the Williams No. 1 well long after the well had been successfully drilled and was known to contain substantial quantities of natural gas.[19] Unlike the Whatley well transaction, no memoranda exist evidencing either an offer to sell or a commitment to purchase at any time prior to the discovery of gas in June 1979. Richard Moncrief testified that a commitment to purchase requires a *written* commitment to pay. [R. Moncrief Tr. 248.] Moreover, in a statement Wright issued publicly on June 10, 1988, he admitted that the invitation to purchase the L.D. Williams interest came from Moncrief only *after* June 26, 1979 [Statement of June 10, 1988, p. 12], and thus only *after* gas had been discovered in that well on June 27, 1979.

It is clear that Wright was not billed for his interest in the Williams No. 1 well until September 20, 1979, although Moncrief was himself billed for those drilling costs almost three months earlier on June 30, 1979. [R. Moncrief Tr. 248; Exhibits A-23, A-24.][20] Wright paid the bill by check dated October 11, 1979. [Exhibit A-23.] It was

[19] The only other recipients of a share of Monty Moncrief's interest in the Williams No. 1 well were the R. W. Moncrief Trust; the W. A. Moncrief III Trust; the C. B. Moncrief Trust; and the Tom O. Moncrief Trust—all trust funds for the benefit of Monty Moncrief's grandchildren. [Exhibit A-22, p. 332.]

[20] Although the first page of Exhibit A-23 is dated August 20, 1979, even a cursory examination of the second and third pages reveals that Moncrief Oil could not have billed Wright for August 1979 expenses on August 20 because Moncrief Oil itself did not receive the bill from the well operator until after August 21, 1979 and did not process that bill until September 7, 1979. Thus, the "8/20/79" is a typographical error which must refer correctly to 9/20/79.

Moncrief's custom to bill Wright for his share of the drilling costs within a month of Moncrief's receiving an invoice from the well operators. [Exhibits A-15, A-25, A-26.] Instead, Moncrief's invoice to Wright dated July 20, 1979 included only June expenses for the Whatley well. [Exhibit A-25.] Even an inadvertent omission of the Williams expenses from the July invoice does not explain the delay in billing, since the Moncrief invoice to Wright dated August 15, 1979 included only July expenses on the Whatley well and made no mention of Williams No. 1. [Exhibit A-26.]

Furthermore, Wright paid for his Williams well interest with the proceeds of a $35,000 loan from Continental National Bank negotiated in October 1979. [Exhibits A-27, A-28.] This delay in financing is particularly significant because just prior to the June completion of the Williams well, Wright was in the process of obtaining financing for the Whatley well. [Exhibits A-16, A-17, A-18.] The bank's check for the Whatley loan proceeds was not deposited into Wright's account until July 2, 1979. [Exhibit A-29.][21]

Robert Gerrard, Chairman of the Board of Continental National Bank in 1979, approved both of Wright's loans. He testified that he did not recall Wright ever discussing the Williams well investment at the time he was seeking the Whatley loan:

> Q Do you have any recollection as to whether that particular loan of $20,000 was for a single well or for more than one well?
>
> A No, sir, I really don't recall.
>
> Q Do you recall any discussion or agreement with Mr. Wright that he would have an open line of credit with the bank for additional well investments in the future?
>
> A No, sir. Any transaction I had with Mr. Wright was handled on an individual basis.
>
> Q Do you recall any understanding with Mr. Wright at that time, in May of 1979, that there was anything beyond that individual transaction for $20,000 . . . did he mention any other potential wells that he was thinking about or deals of any kind?
>
> A Not that I recall, no.

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[21] Wright committed to pay for the Whatley well in late February, but waited until April or early May to seek financing. [Exhibits A-16.] However, in that case there was no need to obtain financing earlier since the well was not completed until July 11, 1979 and the first charges were invoiced in June. In the case of the Williams well, financing was delayed until substantially after completion and invoicing.

[Gerrard Tr. 13-14.] Had Wright known on or before June 27, 1979 that he needed money to purchase an interest in a second well, it is likely that he would have at least raised the second loan with Gerrard and more likely that he would have negotiated both loans at the same time.[22]

The timing of Wright's commitment to purchase the Williams No. 1 well is crucial. In the first place, prior to completing the drilling of a well, it is not certain whether or not the well will be a commercial success. [Hockaday Aff. ¶ 5.] Therefore, any investment in the well is risky. However, once the well has been completed, its output is known and the risk is, therefore, virtually eliminated. [*Id.*] "[I]f he agreed to participate in the well after completion ... I would be prone to think it was a sweetheart agreement. You know, I would love to have a chance to do that every day." [Hockaday Tr. 63.]

Prior to completion of the Williams well on June 27, 1979, the market value of the prospect was equivalent to the cost of drilling the well. [Hockaday Aff. ¶ 5.] Thus, Monty Moncrief purchased his interest in that prospect by paying his designated portion of the drilling costs. [Exhibit A-24.] However, after June 27, 1979 when the well was completed and its commercial output was known, the market value of an interest in the well was substantially higher than mere drilling costs. Hockaday has calculated the value of Wright's interest in the Williams No. 1 well as of June 27, 1979, at $132,000—$140,000. [Hockaday Aff. ¶ 6.] Since Wright paid approximately $50,000 in drilling and related costs for the Williams well interest, he obtained his interest at substantially less than the market value of $132,000—$140,000.[23] [Exhibits A-23, A-31 through A-42.]

Secondly, in October 1979 when Wright purchased the interest in Williams No. 1, it was already clear that the Whatley well would be much less successful than had been anticipated. [Hockaday Affidavit ¶ 2.] As those who knew Monty Moncrief have testified, Moncrief would not have wanted Wright to invest in a deal he had recommended without deriving some profit from it. [R. Moncrief Tr. 237-38; Allen Tr. 42-43.] Thus the opportunity to purchase the Williams interest, coming after it was known that the Williams well would be

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[22] Wright's 1979 Financial Disclosure Statement lists the dates of both his Whatley and Williams purchases as April 1979. [Exhibit A-30.] It is unclear what the significance of the April date is, since we know that he made a written commitment to pay for Whatley in February and actually obtained financing and made payment for Whatley in June 1979. As Wright completed the form in May 1980, it may be that by that time he had simply forgotten the actual purchase dates. However, because we know that the April date is incorrect with respect to the Whatley well, we have no reason to believe that the April date is correct with respect to the Williams No. 1 well.

[23] To date, all costs for Wright's interest in Williams No. 1 have been approximately $56,000. [Exhibits A-23, A-31 through A-42.] Drilling costs, major equipment costs and leasehold costs were approximately $50,000. [*Id.*]

profitable, appears to have compensated for the disappointing performance of the Whatley investment.

It is also worth noting that Wright himself testified before the Committee that he had "a self-imposed limit of about $20,000 [to] invest in something that speculative."[24] [Wright Tr. 19.] Yet, despite an investment in the disappointing Whatley well of over $22,000 between June 26, 1979 and September 20, 1979, Wright invested in excess of $29,000 in another well on October 11, 1979. [Exhibits A-15, A-23, A-25, A-26.] It is highly unlikely that Wright would have put two to three times his self-imposed limit into two speculative investments, particularly after he knew one was at best only marginally profitable and at worst "a loser." The lack of any documentary evidence to support the commitment to purchase prior to the successful drilling of the well clearly and convincingly demonstrates that Wright knew before he invested in Williams No. 1 that there was no risk and that he would most assuredly receive a substantial return on his investment.

We note also that Wright paid the first Williams No. 1 invoice for drilling costs of $29,036.91 by check dated October 11, 1979. [Exhibit A-23.] The next invoice, dated October 19, 1979, for drilling costs of $8,668.21 was not paid until September 4, *1980*. [Exhibit A-31.] He did timely pay the smaller November 1979 through March 1980 Moncrief invoices. [Exhibits A-33, A-34, A-35, A-36.] However, he did not pay the April 18, 1980 Moncrief invoice for $7,703.64 until July 1, 1980. [Exhibit A-33.]

(a) Analysis and Conclusions

Wright's purchase of an interest in the Williams No. 1 well violates House Rule XLIII, clause 4. Wright's purchase of an interest in a well for the cost of drilling when the well had been determined to be a commercial success three months earlier is a "gift", *i.e.*, a "thing of value . . . unless consideration of equal or greater value is received by the donor." [Ethics Manual, p. 28.] The evidence demonstrates unmistakably that Wright obtained the Williams interest at the roughly $50,000 cost reserved for those who have assumed the risk of drilling a dry hole. However, he made no commitment to pay those costs until after it was absolutely determined that the well was a commercial success and the risk of a dry hole was, therefore, eliminated. Hockaday's affidavit further demonstrates that, as a result, Wright paid $82,000—$90,000 less than the $132,000—$140,000 value of the Williams No. 1 well.

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[24] Wright's 1978 Financial Disclosure Statement reveals that as of the end of 1978, his total assets, including his home, were in the range of $72,000 to $170,000. [Exhibit A-43.]

While we can find no testimony or documents to link Whatley's poor performance with Wright's being given the opportunity to purchase Williams No. 2, we believe nonetheless that Wright received this opportunity because the Whatley well, which Moncrief had personally recommended as a good risk, had in fact not performed to expectation. Therefore, knowing that the Williams No. 1 well was a success, Moncrief gave Wright a good commercially profitable well to make up for the unprofitable one.

It appears that Moncrief may have made interest-free loans to Wright in 1979 and 1980 when Wright failed to pay timely the drilling costs billed to him in October 1979 and April 1980. Assuming he could have obtained loans from a bank for the amounts owed at the same rates Continental National Bank charged for his other gas well loans,[25] his interest on the $8,668.21 for ten months would have been nearly $1,000 for the period November 1979 through August 1980. His interest on the $7,703.64 for two months would have been nearly $180 for the period May and June 1980. However, it is impossible to determine whether Moncrief's failure to pursue payment of these overdue amounts was intended as a gift or was merely a bookkeeper's oversight. Therefore, we cannot find that these "grace periods" were gifts.

There is no question, however, that Monty Moncrief, and indeed his entire family, had a direct interest in legislation throughout their association with Wright. Monty Moncrief, while not formally registered as a lobbyist, visited Washington, D.C. frequently to lobby on behalf of the Independent Petroleum Association of America and its members' interest in legislation relating to the domestic oil and gas industry. Richard Moncrief also testified that he met regularly in Washington, D.C. with Members of Congress including Wright regarding tax and other legislation affecting independent oil producers. In fact, with the exception of the Neptune matter, virtually all the Moncriefs' contacts with Wright have related directly to their interests in legislation.

Thus because Wright received a gift worth substantially more than $100 from a person having a direct interest in legislation, he has violated House Rule XLIII, clause 4.

In addition, Wright did not report the receipt of the gift on his 1979 Financial Disclosure Statement. [Exhibits A-30, A-47.] His nondisclosure is a violation of House Rule XLIV.

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[25] The rate charged in November and December 1979 was 13 percent. From January through August 1980, the rate fluctuated between 13 percent and 16 percent with a weighted average of about 14 percent for that period. [Exhibit A-44.]

Furthermore, we believe there may also have been a violation of House Rule XLIII, clause 3. The opportunity to invest in a "sweetheart" deal came just a short time after Wright had used his efforts to intercede with the State Department and the Egyptian government on behalf of Neptune Oil. Although we believe Wright's actions for Neptune were within the ethical guidelines of this Committee, his acceptance of a "sweetheart" deal as compensation for his efforts would not be.

Wright has denied that his gas well dealings with the Moncriefs were compensation of any kind. [Wright Tr. 11.] In addition, Richard Moncrief and Tex Moncrief have both denied that either they or Monty Moncrief had any intent to compensate Wright for his actions on their behalf. [R. Moncrief Tr. 298-300; W. A. Moncrief Tr. 12-13, 38.] Since Monty Moncrief has died, we will never know how he would have responded to this issue, but presume that he would have denied any intent to compensate Wright. Thus we do not conclude that the opportunity to invest in the Williams No. 1 well was compensation for Wright's effort on behalf of Neptune.

However, under consideration 5 of the Code of Ethics for Government Service, accepting a "favor or benefit" which may reasonably appear to influence the performance of government duties is improper. Therefore, actual motivation notwithstanding, we believe Wright has violated consideration 5 because his efforts for the Moncrief family may reasonably be construed as having been influenced by an actual or promised financial "favor or benefit," *i.e.*, a "sweetheart" deal.

This is not to say that a Member may never have business dealings with or accept favors from constituents he has helped in the course of performing government duties. However, under consideration 5, a Member must use ordinary common sense to evaluate the business deal or favor in light of the surrounding circumstances in order to ensure that he does not accept deals or favors which are likely to arouse public suspicion.

In this case Wright's investment in gas wells with the Moncrief family at the same time when, by his own account, he was going "further than I usually do on some things," to advance Moncrief oil interests in the Middle East, raises the sharpened suspicion that he was being rewarded for his actions. As we have already discussed, in the case of the Whatley well, there were sufficient indicia of legitimacy to quell such suspicion. In the case of the Williams No. 1 well, however, it appears that Wright never committed to make any payment until long after June 27, 1979, when the risk of loss had been eliminated. We believe that a "reasonable person" could conclude

that the opportunity or promise of an opportunity for a risk-free investment was a reward for Wright's course of action on Neptune's behalf.

Furthermore, as this Committee has previously determined, a violation of consideration 5 may also be a violation of House Rule XLIII, clause 1.[26] The Committee has separately determined that clause 1 violations occur where the conduct which violates the Code is "flagrant." [Ethics Manual, p. 3.] Although it is not entirely clear what conduct constitutes a "flagrant" violation, in the matter of Representative John McFall, the Committee issued a statement of alleged violations which provided that his alleged acceptance of $4,000 cash from Tongsun Park was a simultaneous violation of both House Rule XLIII, clause 1 and consideration 5 of the Code of Ethics for Government Service. In that matter, the Committee ultimately found that charge had not been proved by clear and convincing evidence. However, the fact remains that the Committee viewed the conduct alleged as "flagrant."

In this case, we believe that Wright's acceptance of an interest in the lucrative Williams No. 1 well in violation of consideration 5 was "flagrant" and therefore was also a violation of House Rule XLIII, clause 1.

Thus in sum, Wright's acceptance of the interest in L. D. Williams No. 1 violates House Rule XLIII, clauses 1 and 4, and consideration 5 of the Code of Ethics for Government Service. His failure to disclose the interest is a violation of House Rule XLIV.

(3) The Whatley Sale

By 1983, the demand for natural gas had declined and, therefore, natural gas prices had fallen. Both the Whatley and Williams wells were frequently "shut in" or "curtailed" in 1983-1984, *i.e.*, gas was not being extracted and sold. [R. Moncrief Tr. 258-60; Hockaday Tr. 46-47.] As a result, Wright's income from these wells ceased temporarily and, consequently, he was unable to make payments on his loans from Continental National Bank out of the proceeds of the wells. [Exhibit A-19.] As of December 1983, the amount of principal and interest owing on his account was $20,679.87. [*Id.*]

Given the state of Wright's account, Gerrard testified that he would have discussed it with him and "come to some agreement on pay out." [Gerrard Tr. 24.] Although Gerrard does not specifically recall the agreement reached with Wright, we know that in Febru-

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[26] In the Matter of Representative John M. McFall, H.R. Rep. No. 1742, 95th Cong., 2d Sess.

ary 1984, Wright sold his interest in the Whatley well to Monty Moncrief for $20,000 and used the proceeds from the sale to pay off the outstanding balance on his loans from Continental National Bank. [Exhibits A-46, A-47, A-48, A-49.]

We note that the $20,000 re-purchase price was apparently very near the fair market value of the Whatley interest. [Hockaday Tr. 52-54.] Although the well was "shut in" and was generally considered a "poor investment," Wright's interest in the gas reserves, the salvage value of the well and the value of the undeveloped acreage in 1984 has been appraised at $18,600. [Hockaday Aff. ¶ 3.]

Whether Monty Moncrief actually evaluated the market value of Wright's Whatley interest in 1984 is unknown. However, Monty Moncrief was himself an expert in the oil and gas business and presumably had good instincts regarding the value of completed but "shut in" wells. Therefore, it is impossible for us to determine whether Moncrief intended to pay fair market value or simply to pay Wright enough for Wright to pay the amount due and owing on his loan.

Richard Moncrief testified that his grandfather bought Wright out of Whatley because "the Whatley was largely curtailed.... The gas market was glutted and there wasn't [sic] any sales.... Jim didn't think it was a very good deal for him to stay in it. He had some discussions with my grandfather about it, and we bought him out of the well...." [R. Moncrief Tr. 260.]

Similarly, Duane McDaniel, Monty Moncrief's landman since 1969, testified that it was not surprising that Moncrief bought back the Whatley interest from Wright. "People's situations change financially. Moncrief financially was well endowed and if someone were in a deal and could not keep up or did not want to or didn't understand or ... if they changed their mind, it would not surprise me at all for him to take them out or take their position." [McDaniel Tr. 23-24.]

(a) Analysis and Conclusions

Although it seems likely that Moncrief had no real desire to purchase the Whatley investment from Wright and that he was more likely motivated by the desire to help Wright out of financial difficulty, we do not believe the re-purchase was a "gift" because Moncrief received "consideration of equal or greater value" from Wright, according to Hockaday.

Nor do we believe that Moncrief's re-purchase of the Whatley interest was intended or perceived as "compensation" for Wright's efforts on behalf of Neptune Oil because Moncrief received full and

fair value for the money he paid. However, even if not a "gift" or "compensation," Moncrief's re-purchase of the Whatley well initially raises a question under consideration 5 of the Code of Ethics for Government Service. Moncrief had no interest in such small "bread and butter" investments and chose not to invest in the Whatley well himself when offered by Dallas Exploration in 1979. Moncrief's decision to buy Wright's interest in 1984 when income from his gas well investments was curtailed, can only reasonably be viewed as a "favor or benefit."

Nonetheless, we are aware of no evidence clearly suggesting that the favor from Monty Moncrief in 1984 influenced the performance of any of Wright's governmental duties. Wright apparently performed no services directly for the Moncrief family after 1979. Nor are we persuaded that Wright intervened for Neptune in 1979 because of a promise that a favor would be done years hence. Therefore, no violation of the Code of Ethics for Government Service, consideration 5 has occurred with respect to Wright's Whatley well interest.

Furthermore, there has been no "flagrant" violation of any law or ethical consideration with respect to Wright's Whatley well investment. Thus there has been no violation of House Rule XLIII, clause 1 which, as we discussed above in Section III. A. 2., was designed to deal with "flagrant" conduct.

(4) The Williams No. 2 Farm-Out

By virtue of his interest in the Williams No. 1 well, Wright automatically had the option to participate in the Williams No. 2 well, proposed to be drilled on the same site. When such wells are drilled, the beneficial interests belong to the initial owner, provided he pays the costs of drilling. [Exhibit A-50; Hockaday Tr. 70.]

In early June 1984, after accepting the option, but prior to paying any drilling costs for the Williams No. 2 well, Wright received an offer from the Kaiser-Francis Oil Company to "farm-out" his interest, *i.e.*, to sell Kaiser-Francis his interest in the proceeds from the well in exchange for its paying the drilling and operating costs. [Exhibit A-51.] Wright would, however, receive a small over-riding royalty interest in the well income which would convert to 25 percent of his original interest after "pay-out," *i.e.*, after Kaiser-Francis had recouped its drilling and operating costs. [*Id.*] Wright did not accept the Kaiser-Francis offer, but instead approached Monty Moncrief who took the farm-out on similar terms except that Wright's conversion after pay-out was for 33⅓ percent of his original interest in the well. [R. Moncrief Tr. 286-90.]

There is no apparent reason for Moncrief to have taken this "farm-out," particularly at a higher cost, except as a favor to Wright. [McDaniel Tr. 40-44.] As Moncrief's landman testified: "The advantage to Mr. Moncrief to take out Mr. Wright on a farm-out basis . . . would be miniscule [*sic*], really, except that if Mr. Wright's financial position had changed . . . he would be doing a friendly act." [McDaniel Tr. 40.]

(a) Analysis and Conclusions

Wright's farm-out of Williams No. 2 to Monty Moncrief does not violate House Rule XLIII, clause 4. The fact that Kaiser-Francis offered him a similar deal is convincing evidence that there was a market for that interest at about the same price. The marginal increase in price Wright received from Moncrief is, first of all, marginal and, secondly, may also have been agreed to by Kaiser-Francis had Wright sought to "bargain" for a better deal. Thus, there was no "gift."

Nor does Wright's farm-out of Williams No. 2 violate House Rule XLIII, clauses 1 and 3 or consideration 5 of the Code of Ethics for Government Service. Moncrief received fair value for the farm-out. Moreover, we are not persuaded that the marginal increase in the benefit to Wright in 1984 can reasonably be seen as compensation for services performed in 1979 or as influencing the performance of any governmental duties.

(5) Wright's Profit

Wright testified before the Committee on September 14, 1988 that he "did not make money on those wells . . . . I made some return, not enough to actually justify the investment." [Wright Tr. 16.] In fact, Wright paid $30,031.59 in drilling and monthly operation costs for his interest in the Whatley well. [Exhibits A-15, A-23, A-25, A-26, A-31 through A-37 and A-52.] His income was $19,353.77. [Exhibit A-53.] However, as discussed above, in February 1984, Monty Moncrief repurchased Wright's interest in the well for $20,000 thereby raising Wright's income to $39,353.77. Therefore, over the 4½ years he owned the Whatley interest, Wright made a net profit of $9,322.18 (roughly $2,000 per year)—a 10 percent net average annual return on a fully leveraged investment.

Wright paid $56,475.68 in drilling and monthly operation costs for his interest in the Williams No. 1 well through September 30, 1988. [Exhibits A-23, A-31 through A-42.] His income was $74,480.13 through September 13, 1988. [Exhibit A-54.] Therefore, over the 8 years he has owned the Williams No. 1 interest, Wright has made a net profit of $18,004.45 (roughly $2,250 per year)—a 6.5 percent net average annual return on a fully leveraged investment. We note that Wright still owns his interest in Williams No. 1 and that its value has been conservatively estimated as of July 1988 at $40,000-$50,000. [Hockaday Aff. ¶ 4.] Thus, should Wright decide to sell his Williams No. 1 interest tomorrow and he were to receive $45,000 for it, his net average annual rate of return would be increased to 22.5 percent for each of the last 8 years.

In sum, Wright has not lost money on his investments with the Moncrief family. He has made over $27,000 during the last eight years on fully leveraged investments.

B. Wright's Efforts on Behalf of Texas Oil & Gas Corporation

1. Allegations and Investigation

The Complaint alleges that Wright's co-signature of a September 28, 1979 letter to Secretary of the Interior Cecil D. Andrus regarding mineral exploration leases granted to Texas Oil & Gas Corporation ("TXO") is an apparent violation of House Rule XLIII, clause 3. The Complaint further alleges that at the time he contacted Secretary Andrus, Wright owned stock in TXO and, therefore, stood to benefit from the use of his influence as a Member of Congress.

Apart from the allegations in the Complaint, Wright's co-signing of the September 28, 1979 letter also raises the following issues: (1) whether the letter constitutes an *ex parte* communication on the merits of a rule-making or adjudicative matter pending before an administrative agency prohibited by the Government in the Sunshine Act; and (2) whether the letter constitutes an exercise of undue influence.

In investigating these issues, Special Outside Counsel examined Wright's testimony and the testimony of W. A. Moncrief, Jr., and Richard W. Moncrief; and obtained affidavits provided by TXO Secretary Martin B. McNamara, former Secretary of Interior Cecil D. Andrus, and former Undersecretary of Interior James A. Joseph. We also reviewed documents provided by TXO.

2. Applicable Standards of Conduct

House Rule XLIII, clause 3, provides:

> A member, officer, or employee of the House of Representatives shall receive no compensation nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in Congress.

The Government in the Sunshine Act (the "Act"), also prohibits certain *ex parte* communications between Congressmen and administrative agencies. [Pub. L. 94-409, § 4, 90 Stat. 1241, 1246, 5 U.S.C. § 557(d).] The Ethics Manual, pp. 40-41 describes the prohibitions of the Act as follows:

> The [Act] prohibits a congressional office from making an *ex parte* communication to an administrative agency on behalf of a constituent *concerning the merits of an issue that is subject to formal agency proceedings*, basically those of a "quasi-adjudicatory" nature or those rule-making proceedings that must include formal hearings and a decision on the record.
>
> The legislative history of the [Act] shows that "the prohibition only applies to formal agency adjudication. Informal rule-

making proceedings and other agency actions that are not required to be on the record after an opportunity for a hearing will not be affected by the provision."

[Emphasis added.]

Congressmen also are prohibited from exercising undue influence in communications with administrative agencies.[27] The general ethical prohibition against the exercise of undue influence is discussed at pp. 38-41 of the Ethics Manual:

> In addition to specific statutory proscriptions, ethical standards and guidelines exist that serve to narrow the permissible scope of such activities, prevent abuses of office, and limit undue or improper influence or pressure upon administrative officials and the administrative process.
>
> * * * *
>
> Undue influences upon the administrative process may result from some congressional interventions into ongoing administrative proceedings. Early in the 1950's, the late Senator Paul Douglas, in discussing general ethical considerations in Congressional interventions in administrative proceedings, noted that a legislator "should not try to intimidate the officials involved and he should make it clear that the final decision is in their hands."

3. Factual Development and Conclusions

a. Wright's Intercession on Behalf of TXO

On June 26, 1979, the Bureau of Land Management awarded twenty mineral exploration leases to TXO on approximately 33,000 acres of land located at Fort Chaffee, Arkansas. Thereafter, the Arkla Exploration Company ("AEC"), a subsidiary of the Arkansas Oklahoma Gas Company, along with several United States Senators, challenged the TXO lease award. By letter dated September 28, 1979, then-Majority Leader Wright, along with Senator Lloyd Bentsen and Representative Martin Frost, wrote then-Interior Department Secretary Cecil D. Andrus to "acquaint" him with TXO and to discuss AEC's possible motivation for protesting the TXO lease award.[28] [Exhibit B-1.]

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[27] The prohibition against the exercise of "undue influence" is discussed in full in Section III. F. of this Report.

[28] For a general discussion of the events underlying the TXO lease dispute, see *Texas Oil & Gas Corp. v. Andrus*, 498 F. Supp. 668 (D.D.C. 1980), *rev'd*, 683 F.2d 427 (D.C. Cir. 1982); *Arkla Exploration Co. v. Watt*, 548 F. Supp. 466 (D. Ark. 1982) (decision on motion to dismiss), 562 F. Supp. 1214 (D. Ark. 1983) (decision on merits), *aff'd*, 734 F.2d 347 (1984), *cert. denied, Texas Oil & Gas Corp. v. Arkla Exploration Co.*, 469 U.S. 1158 (1985); and *Texas Oil & Gas Corp. v. Hodel*, 654 F. Supp. 319 (D.D.C. 1987).

The allegation in the Complaint that Wright's authorship of the September 28, 1979 letter violated clause 3 of House Rule XLIII, is premised on the assumption that Wright was a TXO shareholder at the time he wrote the letter in September 1979. That assumption is erroneous. Wright testified that at no time did he own TXO stock. [Wright Tr. 21-23.] In addition, a review of TXO's stock ownership records revealed that Wright was not the owner of record of any shares of TXO stock during the period from January 1, 1975 through February 11, 1986. [Affidavit of Martin B. McNamara.]

Although Wright's 1979 Financial Disclosure Statement does identify an April 1979 TXO "purchase" in the $15,001—$50,000 value range, that report does not provide a specific characterization of the subject matter of that purchase. Wright testified that this Financial Disclosure Statement entry is an improperly identified interest in the Whatley gas well located in Freestone County, Texas. [Wright Tr. 106-08; *see* Section III. A. of this Report.] TXO acted as an independent drilling contractor and the operator of the Whatley Well. [Wright Tr. 106-08.] As an investor in the Whatley Well, Wright's financial return was determined by the productivity of the well. [R. Moncrief Tr. 183-84.] Whether TXO was successful as an entity in other areas would not affect the return to investors in the well. [W.A. Moncrief, Jr. Tr. 19-20.]

(1) Analysis and Conclusions

In light of the evidence showing that Wright has never owned stock in TXO, and that TXO's success as a corporate entity would not have any effect on Wright's return from his Whatley well investment, it is plain that Wright's authorship of the September 28, 1979 letter to Secretary Andrus could not have resulted in his receipt of any compensation or other benefit. Therefore, Wright's intercession for TXO did not violate House Rule XLIII, clause 3.

b. Wright's Communication With the Interior Department

Apart from the question of whether Wright's authorship of the September 28, 1979 letter violated House Rule XLIII are the questions of whether the letter itself constitutes either: (a) an *ex parte* contact with an administrative agency on the merits of a formal rule-making or adjudicative matter in violation of the Government in the Sunshine Act; or (2) an exercise of undue congressional influence.

An examination of the letter itself clearly establishes that it did not address the merits of the question of whether TXO's leases should

be rescinded, but instead merely provided background information on TXO and AEC. The letter specifically disclaimed any attempt to influence the Interior Department's decision to rescind TXO's leases:

> With respect to rescission of TXO's leases and the issuance of its permits to start drilling wells, we have no comment. Obviously your department will follow the current law and regulations in dealing with these matters.

Moreover, neither Secretary Andrus nor Undersecretary Joseph perceived anything unusual about the letter and did not believe it to be an attempt to improperly influence the Interior Department's decision to rescind TXO's leases. [Affidavits of Cecil Andrus and James A. Joseph.] Wright's letter played no role in Joseph's decision to order a study into the manner in which the leases were awarded to TXO or the Interior Department's decision rescind those leases.[29] [Joseph Aff.] Apart from the September 28, 1979 letter, Secretary Andrus and Undersecretary Joseph do not recall any other contacts from Wright or his staff. [Andrus Aff.; Joseph Aff.]

(1) Analysis and Conclusions

In light of the evidence showing that the September 28, 1979 letter did not address the merits of the TXO lease dispute, that the Interior Department's decision on whether to rescind the leases issued to TXO did not involve formal rule-making or adjudication, and that the letter was the only contact Wright or his staff had with Secretary Andrus or Undersecretary Joseph, it is plain that Wright's written communication with the Interior Department did not violate the Government in the Sunshine Act or constitute an undue exercise of congressional influence.

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[29] Even if the letter *did* address the merits of the TXO lease rescission issue, the Interior Department's consideration of whether TXO's lease should be rescinded did not involve a formal rule-making or adjudicative matter because the Secretary of Interior did not have discretion to rescind TXO's leases. *Texas Oil & Gas Corp. v. Watt*, 683 F.2d 427, 432 (D.C. Cir. 1982). Thus even an *ex parte* communication on the merits would not have been improper in that instance.

C. Wright's Publication and Marketing of *Reflections of a Public Man*

1. Allegations and Investigation

Wright's book, *Reflections of a Public Man*, is a compendium of excerpts of Wright's previous writings and speeches. [Exhibit C-1.] Wright and his congressional staff compiled the manuscript. [Cossolotto Tr. 59; Wright Tr. 29, 84.] Wright, his congressional staff, and Wright's close friend, William Carlos Moore, transformed the manuscript into a book.

The Complaint alleges that Wright's campaign funds may have been used to publish *Reflections of a Public Man* in violation of House Rules. In investigating this allegation, Special Outside Counsel examined Wright's testimony and obtained the testimony of seven witnesses, including: Matthew Cossolotto, Wright's Staff Assistant; William Carlos Moore; Marshall Lynam, Wright's Chief of Staff; Phil C. Duncan, Wright's Deputy Chief of Staff; Marjorie Youngblood, Wright's Senior Staff Assistant in the district office; Paul Martin Tonsing, owner of The Printing Center in Fort Worth, Texas; and Richard P. Hoeh, an accounting expert.

Through this testimony and other related evidence, we developed facts regarding the origins, writing, financing, production and marketing of the book. Specifically, we examined: (1) Carlos Moore and his experience, training and job history; (2) Wright's relationship with Moore; (3) the origin of the book and Moore's Madison Publishing Company; (4) the financing of the book; (5) the production of the book; and (6) the marketing of the book.

While investigating the production and marketing of the book to determine whether campaign funds were improperly used, we discovered that the production and marketing of the book resulted in repeated violations of numerous House Rules. Specifically, we discovered that Wright accepted income which exceeded the limit imposed on outside earned income, failed to report that income, accepted gifts of greater than $100 from organizations with an interest in legislation, and failed to report those gifts. In investigating these violations, Special Outside Counsel considered the testimony of those mentioned above, and took further testimony or obtained affidavits from 25 witnesses, including: Craig Raupe, a late personal friend of Wright's who was formerly Wright's floor assistant and campaign manager and more recently was a partner in the consulting firm of Campbell-Raupe Associates; Mack Williams, publisher of the *Fort Worth News Tribune;* Bradley Twitty, a publisher of textbooks and tradebooks; Morton L. Janklow, a publishing

expert; and the following representatives of organizations and individuals who purchased Wright's book in bulk: Mary Ann Mendoza, Assistant to the President of Southwest Texas State University; John W. Pettit, a partner with Hopkins, Sutter, Hamel & Park; Gary Meyers, President of the Fertilizer Institute; Michael J. McAdams, Meyers' Assistant at the Fertilizer Institute; Gerald Cassidy, President of Cassidy & Associates; Harold Thorkilsen, President of Ocean Spray Cranberries, Inc.; Clark Seibold, acting Secretary-Treasurer of Mid-Continent Oil & Gas Association; Benjamin Palumbo, President of Palumbo & Cerrell; Gordon MacKay, Senior Vice President of New England Mutual Life Insurance Company; Charles Hewitt, President of Satellite Broadcasting and Communication Association; Stephen Driesler, Custodian of Records of the National Association of Realtors; Judi Judd, Administrative Assistant of the National Association of Realtors; George Moses, President of the National Association of Arab Americans; Alfred Van Liew, Managing Partner of Van Liew Capital; John C. White, President of the White Consulting Group; S. Gene Payte, a Texas real estate developer; Charles Haddock, Secretary-Treasurer and Business Manager of the General Driver Warehouseman of Local Union 745; Dee J. Kelly, General Counsel to the Bass family, owners of Delbasin Corporation; Charlene Bice, a member of the Board of Directors of the National Education Association; Bernard Rapoport, Chairman and CEO of the American Life Insurance Company; and Dr. Gene Wood, an orthodontist in Fort Worth.

Several organizations which purchased Wright's book in bulk refused to answer questions regarding their book purchases because they believed that being required to give such testimony violated their first amendment rights and that such testimony was not pertinent to this inquiry. They are the Democratic, Republican, Independent Voter Education Political Action Committee ("DRIVE PAC"), Yordi Construction Company, and the International Brotherhood of Boilermakers.

2. Applicable Standards of Conduct

The Preliminary Inquiry's charge that Wright may have used campaign funds to publish a book implicates several House Rules and federal statutes. Moreover, in the course of investigating this charge, we discovered that the enterprise of producing and marketing the book implicated still other Rules and statutes. Specifically, the evidence indicated that the income generated by the book was not "copyright royalties" and that Wright therefore accepted outside earned income in excess of that permitted by the House Rules. Furthermore, even if the income was "copyright royalties," the

evidence indicated that many of the book sales nonetheless resulted in unreported gifts or honoraria income in excess of that permitted by the House Rules.

a. Standards Limiting the Personal Use of Campaign Funds

At one time, federal law (although not the House Rules) expressly permitted Members to use their campaign funds "for *any* . . . lawful purpose." [Federal Election Campaign Act of 1971, P.L. 92-225, Title III, § 317 [318], 88 Stat. 1289, 2 U.S.C. § 439a (1988).] In 1979, Congress passed legislation prohibiting Members from converting campaign funds to their personal use "other than to defray any ordinary and necessary expenses incurred in connection with [the Member's] duties as a holder of Federal office." [2 U.S.C. § 439a (1988).] On the other hand, Congress exempted those Members, such as Wright, who were serving in Congress as of January 1980, the date of the prohibition's enactment. [*Id.*] Accordingly, Wright's use of campaign funds to publish a book would not violate this section of federal law.

Such a use of campaign funds, however, would violate the House Rules. Rule XLIII, clause 6, provides:

> A Member . . . shall keep his campaign funds separate from his personal funds. *He shall convert no campaign funds to personal use* in excess of reimbursement for legitimate and verifiable prior campaign expenditures *and he shall expend no funds from his campaign account not attributable to bona fide campaign purposes.*

Unlike the federal statute, the House Rules apply to all Members, regardless of their length of service.

b. Standards Limiting Outside Earned Income

The House Rules limit the amount of "outside earned income" Members may receive each year:

> [N]o Member may, in any calendar year . . . have outside earned income attributable to such calendar year which is in excess of 30 per centum of the aggregate salary as a Member paid to the Member during such calendar year.

[House Rule XLVII, clause 1(a).] "The term 'outside earned income' means, with respect to a Member, wages, salaries, professional fees, *honoraria*, and other amounts (*other than copyright royalties*) received or to be received as compensation for personal services actually rendered but does not include . . . the salary of such Member as a Member. . . ." [Rule XLVII, clause 3(d).]

Federal law defines "honorarium"—as the term relates to congressional compensation—as "a payment of money or anything of value to a Member for an appearance, speech or article, by the Member." [2 U.S.C. § 31-1(a)(2).] Whether a particular receipt of funds is properly considered an honorarium, or any other type of income, is determined by the factual circumstances, not by its characterization. "[I]ncome may not be recharacterized in order to circumvent the rule [limiting outside earned income.] Indeed, characterization of income is essentially irrelevant." [Select Committee on Ethics, Advisory Opinion No. 13, Ethics Manual, p. 179.]

Federal law limits the amount of the honorarium which the Member may accept:

> [N]o person while an elected ... officer ... of any branch of the Federal Government shall *accept* any honorarium of more than $2,000 (excluding amounts accepted for actual travel and subsistence expenses for such person and his spouse or an aide to such person, and excluding amounts paid or incurred for any agents' fees or commissions) for any appearance, speech, or article.

[2 U.S.C. § 441i(a).] Any honorarium, or any part thereof, which the Member donates to a charitable organization is not deemed accepted by the Member. [2 U.S.C. § 441i(b).]

Federal law and House Rule XLIV require disclosure of honoraria and other outside earned income on annual Financial Disclosure Statements.

c. Standards Limiting Gifts

The House Rules limit the gifts which Members may receive:

> A Member ... shall not accept gifts (other than personal hospitality of an individual or with a fair market value of $50 or less) in any calendar year aggregating $100 or more in value, directly or indirectly, from any person (other than from a relative of his) having a direct interest in legislation before the Congress ....

[House Rule XLIII, clause 4.] Registered lobbyists, and their officers, directors, and agents, are "deemed to have a direct interest in legislation before the Congress." [House Rule XLIII, clause 4.]

The Select Committee on Ethics has interpreted the term "gift" in Rule XLIII:

> [A] "gift" is defined as follows: A payment, subscription, advance, forbearance, rendering or deposit of money, services, or anything of value, including food, lodging, transportation, or

entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received by the donor.

[Select Committee on Ethics, Advisory Opinion No. 7, Ethics Manual, p. 164.]

If a Member accepts gifts, federal law and House Rule XLIV require their disclosure.

3. Factual Development and Conclusions

a. Wright's Relationship With William Carlos Moore

Carlos Moore met Wright in 1954, when Moore was active in the Young Democrats of America. [Moore Tr. 30.] Moore worked for Wright as an unpaid volunteer, distributing campaign literature and knocking on doors during Wright's first campaign for Congress. [Moore Tr. 30-31.]

Between 1954 and 1963, Moore was a printer with the Stafford-Lowdon Printing Company, which printed the *Fort Worth Press* and the *Fort Worth Star-Telegram*. At that time, he was a member of the International Typographical Union, Local 198, in Fort Worth, Texas. [Moore Tr. 40.]

In 1963, Moore became Political and Legislative Director of the Texas Conference of Teamsters. [Moore Tr. 43.] In that capacity, he lobbied for the International Brotherhood of Teamsters ("Teamsters") in Texas, Oklahoma, Arkansas and Louisiana and worked to elect candidates favored by the Teamsters. [*Id.*] He also solicited donations for the Democratic, Republican, Independent Voter Education Political Action Committee ("DRIVE PAC"),[46] the Teamsters' political action committee. [Moore Tr. 44.] Moore's responsibilities during his employment with the Teamsters throughout the 1960's included recommending political candidates to whom the Teamsters should make contributions. [Moore Tr. 56.]

In 1965, Moore moved to Washington to become the Assistant Political and Legislative Director for the Teamsters. [Moore Tr. 45.] Between 1967 and 1971, he was Director of Political and Legislative Action for the Teamsters. [Moore Tr. 48.] In this position, Moore reported directly to Teamsters President James R. Hoffa. [Moore Tr. 49.] Moore was again responsible for helping political candidates favored by the Teamsters win election to Congress, for soliciting money from Teamsters members to fund DRIVE PAC and for designating the candidates to whom the Teamsters would contribute money. [Moore Tr. 48, 56.] From 1965 through 1971, Wright was one of Moore's "best friends." [Moore Tr. 58-59.]

[46] DRIVE PAC was previously named DRIVE Political Fund.

In 1971, Moore left the Teamsters and returned to Texas as the Political and Legislative Director of the Southern Conference of the International Brotherhood of Teamsters for approximately six months. [Moore Tr. 49.] In mid-1971, Moore established Carlos Moore & Associates, a political consulting and lobbying firm. [Moore Tr. 50.]

In the spring of 1973, Wright appointed Moore to represent him on the National Water Quality Commission in Washington, D.C. [Moore Tr. 50.] Moore testified that in 1974, he also worked nights and weekends as a volunteer for Wright's campaign, organizing telephone banks and volunteers. [Moore Tr. 61-62.]

In 1975, the Justice Department investigated Moore for income tax evasion and for misappropriating Teamsters' funds for his personal use. [Moore Tr. 66-67.] Moore allegedly underreported his income on his 1970 income tax returns. The government alleged that Moore had misappropriated Teamsters' money through two bank accounts which Moore used to deposit DRIVE PAC funds and to withdraw cash. [Exhibit C-2, pp. 19-26.] Specifically, Moore asked proprietors Frosene and Sydney Foster of Union Travel Associates if he could use their corporate Union Travel Associates bank account to deposit money. The Fosters agreed and Moore made numerous deposits. [Exhibit C-2, pp. 21-23.] Thereafter, at Moore's request, the Fosters would withdraw cash out of the account and give Moore the cash. [*Id.*] The second account was one Moore opened at Riggs National Bank in Washington in the name of DRIVE Political Fund for depositing and withdrawing cash. [Exhibit C-2, p. 22.] Moore's home address was the address on the account. The bank account was not authorized by the Teamsters, and the Teamsters claimed that it was completely unaware of this account. [Exhibit C-2, p. 23.]

A 1970 audit of DRIVE PAC showed variances in "the amount local unions recorded as being sent to the national DRIVE headquarters" and the amount of receipts reported by DRIVE PAC. [Exhibit C-2, p. 23.] In 1970, Moore allegedly received $30,000 in cash from the Riggs account, and $11,000 in cash from the Union Travel Associates account. [*Id.*] The government formally charged that Moore withdrew the money for his personal use. [*Id.*] Moore claimed, however, that Frank Fitzsimmons, President of the Teamsters, and Jimmy Hoffa, former President of the Teamsters, were aware of the diversion of funds to the accounts, and that the accounts were used to withdraw cash to make cash contributions to politicians.[31] [Exhibit C-2, pp. 19-26; Moore Tr. 67.]

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[31] Charles Haddock, Secretary Treasurer and Business Manager of the General Driver Warehouseman of Local Union 745, testified that he believed Moore went to jail to protect Jimmy Hoffa from prosecution. [Haddock Tr. 34.]

On March 26, 1975, Moore pled guilty to one count of income tax evasion before Judge C. Stanley Blair in the U.S. District Court, Baltimore, Maryland. [Exhibit C-2, C-3.] In return, the government agreed not to prosecute him for income tax evasion in 1968 and 1969 or for the misappropriation of approximately $90,000 of DRIVE PAC funds from 1968 to 1970. [Exhibit C-4.]

On March 24, 1975, two days before Moore's sentencing, Wright wrote a letter to Judge Blair requesting leniency for Moore. [Exhibit C-5.] In the letter, Wright said he was "aware of the basic facts and circumstances concerning the matter" involving Moore. Wright wrote:

> Not only do I know Mr. Moore as an employee, but he has been a personal friend to me for more than twenty years .... Even with the knowledge of the case before you now, it is my opinion that his character and his value to his community is far above the average. It is without reservation that I now ask the court, on Mr. Moore's behalf, to take into consideration the obvious value to us all of Mr. Moore's continued presence in our communities.

Moore was sentenced to two years in a federal correctional institution and three years probation. All but six months were suspended. He actually served four and one-half months in a Seagoville, Texas federal prison. [Moore Tr. 51; Exhibit C-2, p. 48.]

Moore testified before the Committee that during his sentencing hearing the Assistant U.S. Attorney accused him of misappropriating Teamsters' funds in concert with Jimmy Hoffa. Moore testified that he objected and explained to the Court that his guilty plea pertained only to underpaying his income taxes. He said he denied the accusations that he used $90,000 of the Teamsters money, intended for political candidates, for his personal use. He testified that the $90,000 was used to make cash contributions to political candidates, although he declined to tell the Internal Revenue Service, the Assistant U.S. Attorney, or the Committee who received the contributions. [Moore Tr. 71-72.] He testified that he felt honor bound not to reveal the identities of the politicians who received the cash because he did not know if they reported the contributions, or how they had used the money. [Moore Tr. 80.] However, the transcript of Moore's arraignment and sentencing hearing shows that Moore accepted the government's allegations. He did not object to the statements made by the Assistant U.S. Attorney. [Exhibit C-2.] Although his close friend and closest political ally at the time was Wright, Moore testified that Wright was not a recipient of any cash contributions. [Moore Tr. 56-59, 95.]

(b) Moore's Formation of Madison Systems Corporation

Upon his release from prison in 1975, Moore again formed Carlos Moore & Associates in Fort Worth, Texas and returned to public relations, advertising and political consulting. [Moore Tr. 52, 104.] In 1977, he changed the name of his firm to Madison Systems Corporation. [Moore Tr. 52.] Currently, his wife, Terri Moore, owns 90 percent of the business and the remaining 10 percent ownership is split evenly between his two children, Belinda Schlotzhauer and William Carlos Moore III. [Moore Tr. 108.]

Roughly 75 percent of Madison Systems' business consists of printing, including silk screens and bumper stickers. [Moore Tr. 170.] Roughly half of the printing services are done for political figures. [Moore Tr. 172.] Madison Systems also operates phone banks, prepares campaign materials, does mass mailings, and develops and maintains lists of known Republican and Democratic voters. The use of the lists is sold to political candidates. [Moore Tr. 121-25.]

Moore testified that since 1977, the majority of his company's work has been done for Wright and his campaigns,[32] although he also worked for ten to twelve other political candidates, including two members of the U.S. House of Representatives. [Moore Tr. 111-12.]

Although Moore regularly performed campaign services for Wright, Wright and Moore never entered into a written contract for those services. [Moore III Tr. 48-49.] Nevertheless, at various times, Moore billed Wright's campaign for printing and preparing campaign materials such as brochures, yard signs, and bumper stickers; operating phone banks; preparing mass mailings to voters; and preparing pollings. [Moore Tr. 121-22, 131.] Moore also billed Wright for consulting and public relations services. [Youngblood Tr. 118, 146-47.] From 1980 through 1987, Wright's committees paid Moore $510,158.50 in the following increments:

Year	Amount
1980	$ 62,844.78
1981	7,149.77
1982	41,181.93
1983	13,683.04
1984	7,599.78
1985	59,436.44
1986	295,480.86
1987	22,782.20

[Exhibit C-6.[33]]

[32] Between 1957 and 1976, Moore claimed that he received no compensation for any work he did in connection with Wright's campaigns. [Moore Tr. 36-37.]

[33] Subtracted from the figures reflected in Exhibit C-6 are the amounts Moore billed to "Clerk US House" and "others" as these amounts could not be attributed to Wright.

It is impossible to determine whether the amounts Moore received reflect services performed, or if Moore was overpaid for the services he provided, particularly for consulting, public relations and other personal services. [Duncan Tr. 33, 54; Youngblood Tr. 118.] Marjorie Youngblood, Wright's senior congressional staff assistant in his district office, is responsible for paying the campaign invoices. Youngblood testified that prior to 1986, she assumed that Moore's bills were not to be questioned, and were to be paid. [Youngblood Tr. 90.] Until 1986, nobody compared the amount charged to the services performed to determine if the bill was accurate. [*Id.*][34] In fact, no one on Wright's staff testified that they knew what Moore did to justify the amounts paid for consulting and public relations.

On November 20, 1984, Moore created a division of Madison Systems to do business as Madison Publishing Company. [Moore II Tr. 200.] Moore said that Madison Publishing Company was established for the purpose of "publishing many books." However, to date the only book Madison Publishing has worked on is Wright's book, *Reflections Of A Public Man*. [Moore II Tr. 201.] Moore testified that Madison Systems could have gone into publishing, but he formed Madison Publishing as a separate division to establish a specialty and for "business and public relations" purposes. [Moore II Tr. 204.] Moore also testified that he maintained separate bank accounts for Madison Systems and Madison Publishing. [Moore II Tr. 219-20.]

c. *Reflections of a Public Man*

In early 1984, Moore and Wright discussed the possibility of Wright's writing a book. [Moore II Tr. 194; Wright Tr. 25.] Wright and Moore both testified that the book was initially Moore's idea. [Wright Tr. 25; Moore II Tr. 194-96.][35] Moore initially wanted the book to contain pictures of Wright along with some editorial comment. [Moore III Tr. 196.] However, Wright wanted to do a book which would be inexpensive and reach a broad audience, including college students. [Moore Tr. 196-97; Wright Tr. 25.] Wright wanted the book to be read by "people who do work in political campaigns, average citizens." [Wright Tr. 25, 27.] They eventually decided that Wright would compile a book of his former speeches and writings "to let the world know about Jim Wright." [Moore II Tr. 211; *see also* Moore II Tr. 196-97; Wright Tr. 25.]

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[34] In 1986, Phil Duncan began authorizing payments for campaign expenses other than normal operating expenses. [*Id.*]

[35] Paul Driskell testified that Wright told him that he wanted to compile a book of his speeches and poems before Wright discussed it with Moore. [Driskell Tr. 55-56.]

Matthew Cossolotto, formerly Wright's staff assistant, testified that Wright discussed compiling a book at a regular staff breakfast meeting in early 1984. [Cossolotto Tr. 51.] Cossolotto testified that Wright stated that royalties from such a book project would be exempt from the rule limiting a congressman's outside income to 30 percent of his salary. [Cossolotto Tr. 129-30, 170-71.]

(1) Preparing and Printing the Manuscript

(a) Wright's Staff

Wright's congressional staff members were primarily responsible for compiling the book. Wright and Cossolotto selected the excerpts of Wright's speeches and writings used in the book. [Cossolotto Tr. 51, 56; Wright Tr. 29.] When the manuscript was completed, Cossolotto edited and proofread the book and, along with Wright, wrote the copy about Wright for the back cover of the book. [Cossolotto Tr. 139, 141.] Wright also secured copyright protection for the book. [Exhibit C-7.] Charmayne Marsh, Wright's press secretary, selected the photograph for the book's front cover. [Cossolotto Tr. 140.] Marshall Lynam, Wright's Chief of Staff, solicited quotes from noteworthy people for the back cover of the book. [Cossolotto Tr. 141; Lynam Tr. 32.] (The use of Cossolotto and the other staff members to compile the manuscript is discussed fully in Section III. D. of this Report.)

(b) Madison Publishing

Madison Publishing agreed to "publish and market" *Reflections of a Public Man*. [Exhibit C-7; Moore Tr. 207.] Although neither Moore nor Madison Publishing had ever published anything [Moore Tr. 201-02], Moore did not familiarize himself with the responsibilities of a publisher which include editing, copy-editing and revising the work, designing the work for the printer, preparing a book jacket or book cover, and arranging for the printing and binding of the work. [Exhibit C-8.] Moore performed the camera work and printed the front cover. [Moore Tr. 346, 367.] Moore arranged for Horizon Southwest to typeset the manuscript and for The Printing Center to print the book because Madison Publishing did not have the capacity to print 20,000 copies. [Moore Tr. 367.] Moore also arranged for a proofreader for two days. [Moore Tr. 249.] Moore hired firms to perform services related to the proofs and layout sheets, although the exact nature of their services is not known. [Moore Tr. 249, 254.] However, Wright and his congressional staff performed many of the publishing functions not performed by Moore, including proofreading, editing and copy-editing the manuscript, selecting the cover

picture, soliciting endorsements for the back cover, preparing biographical information on Wright for the back cover, obtaining copyright protection, and marketing the book. [Cossolotto Tr. 59, 95, 139-41; Lynam Tr. 32; Moore II Tr. 60; Exhibit C-7.]

The book, a 117-page paperback, was completed and delivered to Moore in two installments on December 6 and 18, 1984.

Moore testified that Madison Publishing incurred costs of $16,467.01 in producing Wright's book. [Moore Tr. 214; Exhibit C-9.] Richard P. Hoeh,[36] an accounting expert, testified that Madison Publishing's total production and marketing costs were actually $18,373.50. [Hoeh Tr. 99.]

Moore testified that Madison Publishing initially had no funds of its own. [Moore Tr. 200-02.] However, on November 28, 1984, eight days after he created Madison Publishing and eight days before the books were ready for distribution, Moore endorsed and deposited a check for $3,000 into Madison Publishing's account. [Exhibit C-10.]

Carlos Moore remembered that the $3,000 deposit reflected a book purchase, but he could not recall the exact name of the purchaser. [Moore Tr. 267-68; Moore II Tr. 67.] He recalled that it was a university in south Texas. [*Id.*] The deposit slip does not list the purchaser's name. We contacted Madison Publishing's initial Fort Worth bank, NCNB Texas, to obtain its records of deposits made into Madison Publishing's account. NCNB Texas produced its records but reported that the record of the deposit on November 28, 1984, was missing from both the branch bank and the bank's central depository. [Exhibit C-37.] "[T]he film bearing the deposit information had been exposed and therefore they were unable to get the needed information." [*Id.*] The bank produced a blank xerox copy of the microfilm record of that check. [*Id.*] We later discovered that Southwest Texas State University issued the check. The University provided us with a copy of the check. [Exhibit C-10.] The check, dated October 16, 1984, is made out to Jim Wright. Wright endorsed the check over to Madison Publishing allegedly as payment for an order of books. [*Id.*]

In addition to the $3,000 deposit, Madison Systems borrowed $10,000 from Central Bank and Trust on January 31, 1985. [Moore Tr.

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[36] Richard P. Hoeh worked for the Internal Revenue Service for three years in the following positions: Special Agent, Criminal Investigations Division; Internal Revenue Agent, Audit Division. He received a B.S. degree in accounting from Missouri Valley College in 1966, and an M.B.A. degree from DePaul University in 1972. He has been licensed to practice public accounting in the State of Illinois since 1972. He specializes in analyzing civil antitrust, damages, and criminal and civil income tax cases. [Hoeh Tr. 6-7.]

237.] Moore told the bank at the time he obtained the loan that it was for the purpose of marketing the book.[37] Moore wrote to H.C. Crow at Central Bank and Trust that he planned to market the book by "direct multiple sales to legislative representatives of associations, business leaders, and labor organizations," by direct mail, by newspaper ads, and by talk show appearances. [Exhibit C-11.] Before the Committee, however, Moore testified that he obtained the loan to replenish the funds he had already taken from Madison Systems to pay for Madison Publishing's expenses in producing the book. [Moore Tr. 240-41.]

Madison Systems initially paid most of Madison Publishing's expenses incurred in producing *Reflections of a Public Man*. [Moore Tr. 241.] For example, Madison Systems paid The Printing Center to print the books, and paid Horizon Southwest for typesetting the manuscript, the two largest production expenses. [Moore Tr. 248, 249.] Although, as discussed above, Wright's campaign had paid over $500,000 to Madison Systems, it is impossible to determine that Madison Systems was paid more than it earned. Since we cannot conclude that the money Madison Systems loaned to Madison Publishing was not its own, but was actually money rightfully belonging to Wright's campaign, we do not conclude that campaign funds were used to produce *Reflections of a Public Man*.

Morton L. Janklow[38], a publishing expert, testified that *Reflections Of A Public Man* would not have been published by a standard publisher. [Janklow Tr. 22.]

> [I]t is not the kind of book that I think could have had publication by any standard publisher .... I don't think anyone would have thought that and this in my impression would not have been a book published in this form. I think that publishers would have tried to encourage the Speaker to write a different kind of book which I think they would have been ready to publish.

[Janklow Tr. 17-18.]

Janklow testified that Wright's use of a "non-mainline publisher" like Madison Publishing is unusual, especially because Wright's pre-

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[37] Moore testified at his first appearance before the Committee that he had also borrowed $20,000 from his wife Terri in connection with the book project; however, at his most recent appearance he testified that he did not borrow any money from his wife. [Moore Tr. 238; Moore II Tr. 58.]

[38] Morton Janklow is Chairman of the Board of Morton L. Janklow & Associates, a New York City literary agency. For the past 17 years, he has spent most of his time representing writers in negotiations with publishers. He is also a senior partner of Janklow & Traum, where he is an attorney specializing in corporate finance, communications and literary property. [Exhibit C-12; Janklow Tr. 7.]

vious books were published by mainline publishers. [Janklow Tr. 39-40.] Janklow offered three reasons why an author who had previously been published by a mainline publisher would choose an entity such as Madison Publishing. First, perhaps the book was not intended for general publication and distribution. Second, perhaps the author knew a mainline publisher would not publish the manuscript. Finally, perhaps Wright knew he would not receive a 55 percent royalty from a mainline publisher. [Janklow Tr. 39-40.]

(2) The "Royalty" Agreement

On December 12, 1984, after 2,160 copies of *Reflections Of A Public Man* had already been printed and delivered to Moore[39] and after $3,000 worth of books had already been sold by Wright, Wright entered into a contract with Moore's Madison Publishing Company to "publish and market" the book.[40] [Moore Tr. 207-09, Exhibit C-7.] James A. McMullen III, a Fort Worth real estate attorney whose field of expertise does not include drafting contracts between authors and publishers, drafted the contract at Wright's request. [Affidavit of James A. McMullen III.] McMullen used a form contract, but incorporated specific provisions which Wright requested, including the distribution of proceeds between Wright and Madison Publishing for bulk sales, single sales, and wholesale and discounted sales. [*Id.*]

The contract specified that the retail price of the book would be $5.95. [Exhibit C-7; Moore II Tr. 208.] Wright was to personally receive $3.25 of the retail price of every book sold, or 55 percent of gross sales. Moore was to receive the remaining $2.70 and pay all expenses. [Exhibit C-7; Moore II Tr. 208.] For wholesale or discount sales, Moore would absorb the first $.70 of the discount with the balance to be deducted from Wright's proceeds. [Exhibit C-7.] The proceeds from any sales were to be initially paid to Madison Publishing and subsequently divided between Madison Publishing and Wright. [*Id.*]

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[39] The Printing Center delivered 2,160 books to Moore on December 6, 1984. [Exhibit C-13.]

[40] Wright testified that Mack Williams, publisher of *Fort Worth News Tribune*, offered to publish the book. However, Wright testified that since Moore had suggested the book idea and Wright was acquainted with his work because he had done punctual work at a reasonable price for Wright during his campaigns, Wright decided to have Moore print the book. [Wright Tr. 26-27.] Williams testified that he offered to publish Wright's book, sell it at a 50 percent discount to bookstores, and split the proceeds with Wright 50/50. [Williams Tr. 19-21; Affidavit of Mack Williams.] This is significantly different from the situation at hand because Wright would have received 50 percent of the net proceeds, not gross proceeds.

Moore testified that he was not familiar with usual and customary royalty arrangements for books such as *Reflections Of A Public Man*, although he knew that the going royalty rate of some New York publishers was 10 to 12 percent. [Moore Tr. 210.] However, Moore explained his agreement to pay Wright 55 percent of gross sales:

> My big aim was to let people in this world know something about Jim Wright, to have a book out that would reflect something about this man . . . at a price that would be something that most people could afford. And then the profit motive came in. What would it take for me to print . . . . the book and put it on the marke[t]. I ruled out the customary big expense that's normally in the big publishing companies that keep talking about 15-20%. I ruled out the big expense out of which is promotion. We had nothing in the budget for promotion. We also had nothing in the budget to give him any lump sum fees up front. When I went through that line of thinking, I came up with a price . . . . I marked it up enough so I would make a reasonable profit.

[Moore Tr. 211.]

Morton L. Janklow, the publishing expert, testified that in 17 years he has never heard of a royalty higher than 15 percent, even for nationally known authors.[41] [Janklow Tr. 18.] Janklow concluded that no rational publisher would enter into an arrangement such as the one entered into between Wright and Moore. [Janklow Tr. 40.]

Janklow testified that a publisher usually receives about $2 for every $1 that the author receives. He said a publisher cannot make a profit with a 55 percent royalty agreement and would lose money if the publisher intended to distribute the book to bookstores in the normal fashion, as most books are sold. [Janklow Tr. 20.] Janklow explained that books are sold to bookstores at a 48 percent discount. Therefore, if a publisher pays a 55 percent royalty after discounting the price 48 percent, the publisher has already lost money, without even considering the cost of printing, marketing, and advertising. [Janklow Tr. 19.]

Prior to his arrangement with Moore, Wright had never contracted to receive a royalty greater than 15 percent of the book's retail price. [Exhibit C-14, C-15, C-16; Janklow Tr. 35-36.] For his book, *You and Your Congressman* (1965 ed.), published by Coward-McCann Publishing Company, Wright received a 10 percent royalty of the retail price on the first five thousand copies sold, 12 percent on the next five thousand, and 15 percent thereafter, except in printings of 2,500 or

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[41] Janklow represents authors who sell millions of books including Clark Clifford, Nancy Reagan, Helmut Schmidt, Pulitzer Prize winner Richard Rhodes, Senator Daniel P. Moynihan, and fiction writers Sidney Sheldon and Danielle Steele.

less when the royalty reverted to 10 percent. [Exhibit C-14.] For Wright's *The Coming Water Famine*, also published by Coward-McCann Publishing Company, Wright received a royalty of 10 percent of the retail price on the first five thousand copies sold, 12 percent on the next five thousand copies, and 15 percent thereafter. [Exhibit C-15.] For his book, *Congress and Conscience*, published by J. B. Lippincott Company, Wright's royalty consisted of 10 percent of the retail price for the first ten thousand copies, 12 percent for the next five thousand sold, and 15 percent thereafter. [Exhibit C-16.]

In contrast, Wright's book *Of Swords and Plowshares*, also a compendium of Wright's speeches and writings, was printed, not published, by the Stafford-Lowdon Company apparently in the late 1960's or early 1970's. Stafford-Lowdon does not have any record of their work on the book. According to Stafford-Lowdon, any record it may once have had would have been in the form of a contract for printing the book and would not have involved any royalty arrangements. [Exhibit C-17.] Wright did not register the book with the Library of Congress. Thus *Of Swords and Plowshares* appears to have been produced in a similar way as *Reflections of a Public Man*, except that Wright had neither a publisher nor a royalty contract for *Of Swords and Plowshares*. At the time Wright printed *Of Swords and Plowshares*, however, there were no limits on outside earned income. We do not know how *Of Swords and Plowshares* was sold or how the income Wright received from the book sales was distributed or reported.

Morton Janklow reviewed Wright's four publishing contracts, including the contract with Madison Publishing. [Janklow Tr. 11.] He also examined a standard form publishing contract generally utilized in publishing. [*Id*; Exhibit C-18.] He testified that Wright's "prior publishing agreements . . . were, in fact, standard form agreements." [Janklow Tr. 35.] However, the contract with Madison Publishing was not a "standard publishing agreement." [Janklow Tr. 32.]

For example, the contract required Wright to procure copyright protection. [Exhibit C-7.] Janklow said the copyright protection is always procured by the publisher at his expense on behalf of the author in the author's name. [Janklow Tr. 32.] The contract does not provide, as is customary, for distribution of the books in bookstores. [Janklow Tr. 33.] Furthermore, the customary terms regarding subsidiary rights, such as book clubs, serials, and foreign and translation rights, are not included in the contract. Janklow explained that a major portion of the income from a book usually stems from such subsidiary rights. [*Id.*]

Mack Williams, publisher of the *Fort Worth News Tribune*, testified that he received 50 percent of the list price of a book he had both written and printed; the retailer received the other 50 percent. [Williams Tr. 9.] However, unlike the contract between Wright and Moore, Williams' arrangement was between himself, as the author and publisher, and the *retailer*. [*Id.*] It was not a royalty agreement, but a sales agreement whereby Williams sold the book directly to the bookstore with no middleman. Wright's agreement was between himself, as author, and Moore, as the printer, *not* the retailer.

Williams also testified that he reprinted excerpts from *Reflections of a Public Man* in his newspaper. He said he obtained permission to reprint the excerpts from Wright. Although the contract provides that the "publisher" has the sole and exclusive right to reprint parts of the book, Wright did not tell Williams to contact Moore. [Williams Tr. 25.]

Bradley Twitty, a publisher of textbooks and tradebooks, testified that the authors of books he publishes sometime receive royalties of 55 percent of the *net* profits. [Twitty Tr. 10-14.] However, Wright's agreement entitled him to 55 percent of the *gross* income from sales of the book. Janklow testified that Wright's 55 percent royalty on the list price would result in substantially more income to the author than would 55 percent of net profits from the book. In fact, even a 15 percent royalty on the retail list price of the book would result in more income to the author than would 55 percent of net profits. [Janklow Tr. 50.]

(3) Marketing the Book

(a) Carlos Moore

Wright's contract with Madison Publishing also required Moore to market the book. [Exhibit C-7.] A publisher's marketing efforts usually include listing the book in the publisher's sales catalog; sending direct mail advertising to schools, libraries, wholesalers, bookstores and other buyers of books; making telephone contacts; sending salesmen to visit bookstores; sending copies of the book to book reviewers; preparing point-of-sale and media advertising displays; and arranging book tours and personal appearances for the author. [Janklow Tr. 25; Exhibit C-8.]

Moore did not employ the usual methods, although he did sell a small quantity of books to two bookstores, Taylor and Barber, the major bookstores in Fort Worth. [Moore III Tr. 145; Duncan Tr. 101-02.] Moore testified that he generally did not want to sell the books to bookstores because he would have to sell the books wholesale for $3.00

each, rather than at $5.95 per copy. He testified that "[t]hat really doesn't leave you much room." [Moore Tr. 323.] The retail bookstore method is the way an overwhelming majority of books are sold in this country.

Moore initially attempted to market the book through phone banks and direct mail solicitation. [Moore Tr. 306.] The phone banks were operated by 12 to 15 people Moore hired at $5.00 an hour, four hours a day, for approximately one week. [Moore III Tr. 19.] The phone banks used a list of potential buyers who were previously identified by Moore as Democrats, and who lived in Wright's congressional district.[42] The direct mail solicitation consisted only of 300 to 500 letters to potential buyers, again identified from Moore's list of Democratic voters. [Moore II Tr. 231; Moore III Tr. 13.]

Moore, in accordance with the "royalty" contract, was to promote and market Wright's book. As just discussed, Moore's direct mail and phone bank approach failed to produce many purchasers. Later, when questioned under oath at a Committee hearing and being warned that any untrue statements would subject him to perjury penalties, Moore denied knowledge of who marketed the book to bulk purchasers (*see* Section III. C.3.d of this Report). In almost every case, save the Teamsters and selected others, Moore could not recall who marketed the books to trade lobbyists and others to whom the book was sold in bulk.

Indeed, in response to specific questioning about some of the bulk purchasers, Moore stated as follows:

> Q Space Satellite TV Industry Association, $10,000.
>
> A That is an association that is in the television dish business, the big dish deal. They bought books for their association.
>
> Q Did you contact them?
>
> A I don't believe I did. I think they contacted me.
>
> Q And 1,104 books? Or how many books did you sell?
>
> A I don't recall for sure how many.
>
> Q Did you mail or deliver them, or whatever? In Alexandria, Virginia?
>
> A They would be trucked up, yes.

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[42] As noted above, Moore maintains and sells the use of a list of Democratic voters to political candidates. Even if use of the list had been purchased by Wright, the list still belonged to Moore. Therefore, Moore was not using property of Wright's campaign to sell the book.

Q Again, we don't know what that costs?

A No, sir.

[Moore III Tr. 154.]

Q Now what about Van Liew Capital, Inc., V-a-n L-i-e-w, Incorporated, Providence, Rhode Island?

A I don't recall that.

Q You have no specific recollection of that?

A No, sir.

[Moore III Tr. 158-159.]

Q Fertilizer Institute, $2,023, 1986, March 7. Do you recall the specifics of that purchase?

A No, sir.

Q Did you contact the Fertilizer Institute?

A I don't recall contacting them, no, sir.

[Moore III Tr. 169-170.]

Moore's other marketing efforts included arranging for an autograph party, one or two newspaper advertisements, and an appearance by Wright on the Larry King Show. [Moore II Tr. 230-31.] Wright personally purchased 500 books at $2.70 each to give to Members of Congress. [Moore II Tr. 298-302.]

Moore testified that he didn't budget for the expense of promotion. [Moore Tr. 211.] Rather, Moore testified that in September and October 1984, prior to the printing of the book, he contacted people he thought might purchase the book in bulk. [Moore Tr. 53.] He specifically recalls contacting people from Texas, including Robert Strauss, former Chairman of the Democratic Party, S. Gene Payte, a real estate developer, and the Teamsters' Charles Haddock. [Moore II Tr. 53-54.]

(b) Wright and His Congressional Staff

Just as Wright's congressional staff employees were primarily responsible for assembling the book, Wright and some of his staff also played an active role in marketing the book. During a staff meeting in early 1985, Wright specifically asked his staff to develop ways to market the book. [Cossolotto Tr. 126-27.] Cossolotto testified that Wright said, "I would like you to talk to Carlos Moore and just talk

about ways to market the book." [Cossolotto Tr. 127.] Apparently as a result of Wright's request, Charmayne Marsh arranged Wright's book signings in Washington, D.C. at Trover's Book Shop, at a Democratic National Committee event, and at the National Press Club. [Cossolotto Tr. 128.] Cossolotto testified that some of Wright's staff members assisted at those book signing events. [*Id.*] For the next few months, Cossolotto recalls that the marketing of the book was a frequent topic of conversation at the regular breakfast staff meetings. [Cossolotto Tr. 129.] "[T]he Majority Leader mentioned at a staff meeting that he wanted us [the staff] to think about ways to market the book." [Cossolotto Tr. 126.] Cossolotto recalls discussions of selling books to school libraries, teachers and the Texas State Legislature. [Cossolotto Tr. 129.]

Discussions with Wright at the breakfast table included conversations about large numbers of books being sold to organizations. [Cossolotto Tr. 133.] Cossolotto testified that it was suggested that "if he gives a speech, maybe he could sell books instead of getting the honorarium." [Cossolotto Tr. 129.] Cossolotto also recalls "some discussion about the fact that honoraria were capped." [Cossolotto Tr. 130.]

Over 97 percent of the book sales were bulk purchases[*] by organizations. [Hoeh Tr. 112.] Many of the bulk purchases occurred when Wright spoke to an organization which had offered him an honorarium for the speech. In several instances, Wright's staff, particularly Marshall Lynam, informed the organization, either before or after Wright's speech, that Wright had reached the legal maximum on honoraria, and suggested that the organization purchase the book instead.[**] For example, Wright gave a lecture in October 1984 at Southwest Texas State University. The University paid Wright a $3,000 honorarium but was subsequently informed by Wright's staff that he would be unable to accept the honorarium. Wright's staff suggested that the University instead purchase books for $3,000 in lieu of the honorarium. The University purchased 504 books. [Affidavit of Mary Ann Mendoza.]

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[*] A bulk purchase is, for the purposes of this Report, any book purchase of [100.00] or more or the sale of fifteen or more books.

[**] According to Wright's 1983-86 Financial Disclosure Statements, Wright had accepted near the maximum amount in honoraria during the first six months of each year. By July 1983, Wright had accepted $23,150. His limit was $23,670. By June 1984, Wright had accepted $24,250. His limit was $24,630. By May 1985, he had accepted $25,085. His limit was $25,500. By April 1986, he had accepted $25,650. His limit was again $25,500. In 1987, Wright's limit was $30,240. By November 17, 1987, he had accepted $30,850. [Exhibit C-21.]

Thus Wright took part in numerous conversations in which the marketing and production of the book was discussed. He was also specifically aware of the marketing technique used by Campbell-Raupe Associates, Inc.[45] A memo from Campbell-Raupe Associates to Wright and his wife, Betty, instructed the Wrights where to send the books purchased by organizations Wright had spoken to. [Exhibit C-20.] In the instructions for two of the organizations, the organization was identified by name *and* by the event at which Wright spoke. For example, a paragraph explaining where to send $2,000 worth of books purchased by Shawmut Bank of Boston stated: "The books for Shawmut (Monday breakfast in Boston) . . . ." The paragraph explaining where to send $1,000 worth of books purchased by New England Life stated: "The books for New England Life (luncheon) . . . ." Instructions where to send the books to Van Liew Capital are also included in the memo. [*Id.*] Representatives of Van Liew Capital and New England Life testified that the books were purchased in lieu of giving Wright an honorarium. [Van Liew Tr. 14-16; MacKay Tr. 16.]

Several of the bulk purchasers testified that they did not want the books they ordered and that they told Wright to distribute them to an institution of his choice. For example, representatives of Ocean Spray Massachusetts Growers and Mid-Continent Oil & Gas Association testified that the books were to be distributed by Wright, although they do not know if such distribution took place. [Thorkilsen Tr. 26-27; Affidavit of Clark Seibold.] In addition, S. Gene Payte and Alfred Van Liew testified that the books they purchased were never received although they had not asked Wright or Moore to distribute them. [Payte Tr. 77; Van Liew Tr. 18.]

As a result of the book endeavor, Wright received $54, 642.25 in so-called "royalty payments" from Madison Publishing in the following increments: on March 27, 1985, Wright received $25,000; on September 25, 1985, he received $3,500; on March 3, 1986, he received $15,000; and on April 14, 1986, he received $11,142.[46] [Hoeh Tr. 108; Moore II Tr. 370, 376-78.]

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[45] Campbell-Raupe Associates, Inc. is a public relations firm which occasionally arranged Wright's speaking engagements. The late Craig Raupe, a partner at Campbell-Raupe Associates, Inc., was formerly Wright's floor assistant, campaign manager and personal friend.

[46] The first royalty payment was more than Wright was entitled to. However, Wright was underpaid in the next three royalty payments. Furthermore, Moore presently owes Wright $17,314 in royalties. [Exhibit C-36.] Moore testified that sometime after this investigation began, Wright told Moore to discontinue royalty payments because of the investigation. [Moore IV Tr. 45.]

(4) Analysis and Conclusions

House Rule XLVII, clause 1(a) limits a Member's "outside earned income" to 30 percent of his salary as a Member. This Rule limits outside earned income, in part because "it is inconsistent with the concept that being a Member of Congress is a full-time job . . ." [Select Committee on Ethics, Advisory Opinion No. 13, Ethics Manual, p. 179.] Thus House Rules do not similarly restrict the amount of *unearned* income a Member may receive from passive investments such as stocks and bonds.

Rule XLVII, clause 3(d) specifically excludes "copyright royalties" from the definition of "outside earned income." A "copyright royalty" is a "share of receipts from a . . . creative work paid to its . . . author" which arises out of the "author's legal right to reproduce, sell, publish, etc. a work of music, literature, etc." [*The New York Times Everyday Dictionary*, 1982.] Thus copyright royalties which result from a publisher's efforts to produce and sell a Member's book, are *unearned* income to the Member and are not subject to the 30 percent cap on outside *earned* income. However, where a Member is both author *and publisher*, he does not receive unearned "royalties." His income is *earned* by his efforts to produce and sell the book and is, therefore, subject to the limits of House Rule XLVII, clause 1. "[T]he determining factor is whether or not the personal services of the Member actually generate any significant income . . ." [Advisory Opinion No. 13, Ethics Manual, p. 184.]

In this case, the arrangement between Wright and Moore was not a standard, arms-length business arrangement between an author and his publisher to provide the author with "copyright royalties" from the publisher's sale of books. Rather it was a joint venture between two friends who together created, published and marketed Wright's book in order to provide Wright with income. Such income earned by the Member cannot be transformed into "copyright royalties" merely by creating a so-called "publisher" and entering into a contract to pay so-called "royalties." The Select Committee on Ethics stated in Advisory Opinion No. 13 that the limitations on outside earned income may not be avoided by mischaracterizing a transaction. "In all cases, the real facts will control. . . . [T]he label or characterization placed on a transaction, arrangement or payment by the parties may be disregarded for purposes of the Rule. . . . In short, income may not be recharacterized in order to circumvent the Rule." [Ethics Manual, p. 180.]

Carlos Moore is not a publisher. He is a printer, fund raiser and campaign organizer who has worked for Wright for many years.

Moore initially worked for Wright's campaigns without pay. In return, Wright later gave Moore a job and wrote a recommendation for him when Moore was facing a prison term. Wright also became the principal client of Moore's political consulting firm, Madison Systems, which received over $500,000 in payments from Wright's campaign for work done during the period 1980-1987. Moore had neither published a book nor been trained as a publisher before forming Madison Publishing on November 20, 1984. Although he stated that his purpose in forming the company was to "publish many books," Moore has not "published" anything since forming the company.

With respect to Wright's *Reflections of a Public Man*, Moore was no more than a printing coordinator. For example, he printed the book cover and arranged with others to typeset and print the book itself. Wright and his congressional staff performed most of the traditional functions of a publisher, including editing, copy-editing, proofreading, manuscript revision, drafting copy for the back cover of the book, selecting a photograph for the front cover and obtaining celebrity endorsements.

Wright and his congressional staff also played a major role in marketing the book by arranging for bulk purchases by lobbyists and groups Wright had spoken to. Although Moore sent out 300 to 500 letters and hired 12 to 15 people to make telephone solicitations for one week, he never even intended to market the book through the usual channels, *e.g.*, bookstores and book clubs. Thus the focus of the marketing effort was on bulk sales which were accomplished primarily through Wright's own efforts. The income he received is, therefore, "outside earned income" subject to the 30 percent limit imposed by House Rule XLVII, clause 1.

In addition, the mere existence of a "royalty" contract between Wright and Moore's Madison Publishing does not mean that Wright's income may properly be characterized as royalty income. The contract is not a standard royalty agreement. James McMullen, the real estate attorney who prepared the contract, testified that he had never before prepared such an agreement and that he used a standard form contract. However, only four of the fifteen clauses in the contract came from the standard form. The remaining provisions were apparently included at Wright's request. Morton Janklow testified that, in fact, the contract was not a royalty contract in accordance with the standard of the publishing industry. For example, the contract provides that Wright will himself secure and pay for copyright protection for his book. Copyright protection is

normally secured by the publisher. Nor does the contract provide for the customary distribution of the books to bookstores. The contract does not provide for subsidiary sales to book clubs, etc., which Janklow testified usually makes up a major portion of the income from book sales.

Moreover, the parties did not abide by the terms of the agreement. For example, when Mack Williams requested permission to reprint excerpts from the book in his newspaper, Wright authorized the reprinting despite the contract provision granting that right exclusively to Madison Publishing. Nor did Madison Publishing prepare an accounting of sales receipts every three months and pay Wright his "royalties" at those times. In fact, Wright received payments from Madison Publishing in March 1985, September 1985, March 1986 and April 1986. He has yet to receive an estimated $17,304 presently owed him in "royalties." Thus, Wright and Moore did not act as author and publisher, but merely characterized their joint venture as a royalty agreement in order to circumvent the earned income limitations of House Rule XLVII, clause 1. [*See* Table C-1, Summary of Wright's Violations—Outside Earned Income and Gifts (Assuming The Income Is Not A "Copyright Royalty").]

However, even if Wright's income could properly be characterized as "copyright royalties," in many instances his receipt of those "royalties" is nonetheless a violation of Rule XLVII, clause 1, because the "royalties" were received from an organization *as payment for Wright's speech or appearance.* In other words, the "royalty" was, in fact, an "honorarium." Honoraria are included within the definition of "outside earned income" provided in House Rule XLVII, clause 3(d). Thus since Wright received those honoraria in years when he had otherwise exceeded the 30 percent limit on outside earned income, he violated Rule XLVII, clause 1 each time he received and kept that income and violated Rule XLIV each time he failed to disclose the honoraria on his Financial Disclosure Statement. [*See* Table C-2, Summary of Wright's Violations—Outside Earned Income and Gifts (Assuming The Income Is A "Copyright Royalty").]

In addition, several bulk purchasers never received the books. Therefore, in each of those instances, Wright received a gift because he received the books while the purchaser did not receive "consideration of equal or greater value." [Select Committee for Ethics, Advisory Opinion No. 7, Ethics Manual, p. 165.] Since several of these gifts were from organizations with an interest in legislation, Wright violated Rule XLIII, clause 4, prohibiting gifts worth more than $100 from donors with an interest in legislation. Moreover, Wright's

failure to report any of the gifts violated Rule XLIV requiring Members to report all gifts worth more than $100.

Since there is no evidence that the money Madison Publishing used to produce the book were campaign funds, we find no basis for concluding that campaign funds were used in violation of House Rule XLIII, clause 6.

d. Bulk Purchasers[47]

To illustrate the ways in which Moore, Wright and Wright's congressional staff marketed the book to avoid the House Rules on outside earned income and gifts, we have listed below each of the bulk purchasers who testified before the Committee and a description of the transaction involved.

(1) Purchases Arranged by Wright's Staff in Lieu of Honoraria

(a) Southwest Texas State University ("Southwest Texas State")

By letter dated March 30, 1984, Robert L. Hardesty, President of Southwest Texas State University, invited Wright to give a speech as part of the Lyndon Baines Johnson Distinguished Lecture Series. [Exhibit C-10A, p. 1.] In the March 30, 1984 letter, Mr. Hardesty offered Wright a $3,000 honorarium plus expenses. [*Id.*] On June 19, 1984, Wright responded by letter to Hardesty accepting the invitation and suggesting October 15 or 16 as the appropriate day. [Exhibit C-10A, p. 2.] Wright gave the speech at Southwest Texas State University on October 16, 1984 and accepted the agreed upon $3,000 honorarium. (Affidavit of Mary Ann Mendoza; Exhibit C-10A, p. 3.] The $3,000 check he received was made payable to Wright and dated October 12, 1984. [Exhibit C-10.] Sometime after he received the check, a woman on Wright's staff phoned Mary Ann Mendoza, Assistant to the President of Southwest Texas State, and informed Mendoza that since Wright already had reached the yearly dollar limit for honoraria allowed to be kept by a congressman, Wright would like to purchase $3,000 worth of his books for the University. [Affidavit of Mary Ann Mendoza.] The University agreed to receive the books. [*Id.*] Wright did not return the original check, but subsequently endorsed it to Madison Publishing Company, which

[47] Due to time constraints, only 20 out of 76 bulk purchasers were subpoenaed to testify before the Committee. [Exhibit C-19.]

deposited it on November 28, 1984, before the books were even ready for distribution. [Exhibit C-10.] Sometime thereafter, Southwest Texas State received 504 books which it distributed mainly to students in its political science department. [*Id.*] Under his contract with Madison Publishing, Wright received $1,650 of the $3,000 as "copyright royalties" for the "sale" of the book to the University.

The $1,650 Wright received from the book sale is not "royalty" income, but "outside earned income" subject to the 30 percent limitation of Rule XLVII, clause 1. Since Wright exceeded the limit on outside earned income in 1984, his retention of the income he received from this book purchase violated Rule XLVII, clause 1. Alternatively, even if the income is considered to be a "copyright royalty," it is nevertheless outside earned income because the "royalty" was Wright's honorarium for his speech at Southwest Texas State. Therefore, Wright still violated Rule XLVII, clause 1. In either case, Wright also violated House Rule XLIV for failing to disclose the income as outside earned income on his 1984 Financial Disclosure Statement. Furthermore, Wright plainly accepted the entire check for $3,000 *as an honorarium.* Thus, he also violated 2 U.S.C. § 441i which limits acceptance of a single honorarium to $2,000.

(b) Hamel & Park (currently Hopkins, Sutter, Hamel & Park)

John W. Pettit, a partner with the law firm of Hamel & Park, testified that he made arrangements through Marshall Lynam for Wright to address the firm's clients and friends on July 29, 1985. [Pettit Tr. 9.] When Pettit told Lynam that the firm was prepared to pay Wright the usual honorarium, Lynam suggested that in lieu of the honorarium, the firm should purchase $2,000 worth of Wright's book. [Pettit Tr. 11-12.] Pettit agreed. Hamel & Park received the books and distributed some as a momento of the event, and others to the firm's clients and friends. [Pettit Tr. 15-16.] Under his "royalty" contract, Wright received $1,100 for this "sale."

As discussed above, the $1,100 Wright received from the "sale" of the books to Hamel & Park is not "royalty" income, but "outside earned income" subject to the 30 percent cap. Since Wright exceeded the limit on outside earned income in 1985, the income he received from this book "sale" violated Rule XLVII, clause 1. Alternatively, even if the income is considered to be a "copyright royalty," it is nevertheless outside earned income because it was Wright's honorarium for his speech to the clients of Hamel & Park. Therefore,

Wright violated Rule XLVII, clause 1. In either case, Wright also violated Rule XLIV for failing to disclose the income as outside earned income on his 1985 Financial Disclosure Statement.

(c) Fertilizer Institute

On March 11, 1986, Wright spoke at an event for the Fertilizer Institute, a trade association which represents the domestic fertilizer industry in legislative areas. [Meyers Tr. 8, 14.] Gary Meyers, President of the Fertilizer Institute, testified that Wright did not receive an honorarium for his appearance. [Meyers Tr. 14.] However, Meyers testified that the Institute wanted "to do something for [Wright] something such as a plaque, a small gift, et cetera. Someone on [Wright's] staff suggested you may want to buy some books. We thought it sounded good because of the P.R. value we could use throughout the year as he ascended to leadership." [Meyers Tr. 18.] On February 26, 1986, before Wright's appearance, the Institute bought 340 copies of the book for $2,023. [Meyers Tr. 16.] Some of the books were given to the group's board members who attended Wright's speech. The remaining books were distributed to visitors as a public relations tool. [Meyers Tr. 13.] Under his "royalty" contract, Wright received $1,112.65 from this "sale" of books.

Here, too, the $1,112.65 Wright received from the "sale" is not "royalty" income, but "outside earned income." Since Wright exceeded the limit on outside earned income in 1986, the income he received from this book purchase was in violation of Rule XLVII, clause 1. Alternatively, even if the income is considered to be a royalty, it is nevertheless outside earned income because it was Wright's honorarium for his speech to the Fertilizer Institute. Therefore, Wright violated Rule XLVII, clause 1. In either case, Wright also violated Rule XLIV for failing to disclose the income as outside earned income on his 1986 Financial Disclosure Statement.

(d) Ocean Spray Massachusetts Growers ("Ocean Spray")

Gerald Cassidy, President of Cassidy & Associates, a registered lobbying organization, testified that he arranged for Wright to address a group of Ocean Spray Massachusetts Growers in Boston in late fall, 1985. [Cassidy Tr. 20-21.] In 1985, Ocean Spray had an interest in legislation involving cranberry research, and previously had an interest in certain appropriation matters. [Cassidy Tr. 40.] Cassidy testified that although Ocean Spray had offered Wright a $2,000 honorarium for addressing the group, Lynam asked Cassidy if Ocean Spray would buy books instead. [Cassidy Tr. 25.] Cassidy

testified that Lynam stated that "if it would not be a problem for you or your client, we would rather have you purchase some of Jim's books so we could distribute them." [*Id.*] Cassidy testified that the only other similar requests he has received have been when members ask "to give them a check instead for a charity." [Cassidy Tr. 27.] Cassidy stated that "we thought [the books] were the honorarium." [Cassidy Tr. 28.]

Although the honorarium check had already been written, Cassidy informed Ocean Spray's Vice President and General Counsel, Kenneth J. Beeby, that "Jim would like us to use these funds to purchase copies of his book for him to distribute." [Cassidy Tr. 27; Exhibit C-22.] Cassidy requested that Beeby issue a second check. [Exhibit C-22.] On December 12, 1985, Beeby sent Cassidy a new check in the amount of $2,000, made payable to Madison Printing Company. [Exhibit C-23.] Under his contract, Wright received $1,100 from this book "sale".

Harold Thorkilsen, President of Ocean Spray Cranberries, Inc., also testified that it was Ocean Spray's understanding that Wright preferred that Ocean Spray grant his honorarium in the form of a book purchase. [Thorkilsen Tr. 16.]

Moreover, pursuant to an agreement between Wright's office and Ocean Spray, Ocean Spray never received any books because Wright was supposed to distribute the books himself. [Thorkilsen Tr. 26-27.] Cassidy testified that he did not know if the books were ever distributed. [Cassidy Tr. 28.]

Moore testified that he did not recall any instance in which a book purchaser asked him to send its books to Wright for Wright to distribute, nor did Moore recall distributing books himself at a purchaser's request. However, Moore remembered sending books to one or two lists of school children or teachers when the purchaser had given him a list. [Moore III Tr. 177-78.][48]

The $1,100 Wright received from the "sale" to Ocean Spray was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Alternatively, even if the income is a royalty, it is nevertheless outside earned income because it was Wright's honorarium for his speech to Ocean Spray. Therefore, Wright violated Rule XLVII, clause 1. In either case, Wright also violated Rule XLIV for failing to disclose the income as outside earned income on his 1985 Financial Disclosure Statement.

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[48] Ocean Spray also purchased 840 books in March, 1985. This unrelated purchase is discussed in Section III.C.3.d.(3)(d).

Furthermore, the books which Ocean Spray gave to Wright for his distribution constitute a gift, and therefore Wright violated Rule XLIII, clause 4. Wright also violated Rule XLIV for failing to disclose the gift on his 1985 Financial Disclosure Statement.

(e) Mid-Continent Oil & Gas Association ("Mid-Continent")

Wright addressed Mid-Continent's 1986 annual meeting. Mid-Continent is a trade association, and thus has an interest in legislation. Clark Seibold, acting Secretary-Treasurer of Mid-Continent, stated that in March, 1986 he was instructed by Steven Ward, Vice President of Mid-Continent, "to explore the possibility of purchasing the book ... in a quantity worth $1,000.00. I was told that the Association was making this purchase in lieu of providing the Congressman [Wright] an honorarium." [Affidavit of Clark Seibold.] In a memo confirming their conversation, Ward wrote that Wright's staff suggested that Mid-Continent instead purchase as many copies of Wright's books as the amount of the honorarium would buy. [Affidavit of Clark Seibold, Exhibit 2.] Mid-Continent purchased the books on March 24, 1986. Seibold contacted Moore and told Moore that Mid-Continent only wanted three books and wanted Moore to handle the distribution of the remaining books to libraries and other public institutions of Congressman Wright's choice. [Affidavit of Clark Seibold, Exhibit 2.] Seibold did not know if the books were ever distributed. [Affidavit of Clark Seibold.] Under his contract, Wright received $550 from this "sale" to Mid-Continent.

As discussed above, Moore does not recall distributing books to organizations of Wright's choice, although Moore remembered sending books to one or two lists of school children or teachers when the purchaser had given him a list. [Moore III Tr. 177-78.]

The $550 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. However, even if the income is a royalty, it is nevertheless outside earned income because it was Wright's honorarium for his speech to Mid-Continent. Therefore, Wright violated Rule XLVII, clause 1. In either case, Wright also violated Rule XLIV for failing to disclose the income as outside earned income on his 1986 Financial Disclosure Statement.

Furthermore, the books which Mid-Continent gave to Wright for his distribution constitute a gift, and therefore Wright violated Rule XLIII, clause 4. Wright also violated Rule XLIV for failing to disclose the gift on his 1986 Financial Disclosure Statement.

(2) Other Purchases in Lieu of Honoraria

(a) Palumbo & Cerrell

Benjamin Palumbo, President of Palumbo & Cerrell, testified that he arranged for Wright to spend an evening with his clients, the American Society of Composers, Authors and Publishers ("ASCAP") in March, 1986. [Palumbo Tr. 11-12.] At the time, ASCAP had a specific interest in source licensing legislation, and Palumbo had solicited Wright's assistance in furtherance of this legislation. [Palumbo Tr. 31-32.] Although ASCAP offered to pay Wright a $2,000 honorarium, Kathy Mitchell informed Palumbo that an "honorarium was not a possibility because [Wright] had reached his legal limit." [Palumbo Tr. 16-17.]

Palumbo testified that at a later time, he suggested to ASCAP that because Wright was committing "a substantial portion of his time," it "do something in the nature of an appropriate response." [Palumbo Tr. 16.] Palumbo suggested that ASCAP buy books. [*Id.*] Palumbo & Cerrell purchased $2,023 worth of books on April 21, 1986. He said neither Kathy Mitchell nor anyone else had asked him to purchase books in lieu of paying Wright an honorarium. [Palumbo Tr. 18.] Palumbo received the books and plans to distribute them at an undetermined future ASCAP event. [Palumbo Tr. 20.] Under his contract, Wright received $1,112.65 from this "sale."

The $1,112.65 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. However, even if the income is a royalty, it is still outside earned income because it was Wright's honorarium for his speech on behalf of Palumbo & Cerrell. Therefore, Wright violated Rule XLVII, clause 1. In either case, Wright also violated Rule XLIV for failing to disclose the income as outside earned income on his 1986 Financial Disclosure Statement.

(b) New England Mutual Life Insurance Company ("New England Life")

Craig Raupe arranged for Wright to speak at a New England Life meeting in Granbury, Texas on December 7, 1984. [MacKay Tr. 15-16.] Gordon MacKay, Senior Vice President of New England Life, testified that Wright felt an honorarium was not necessary for speaking at the meeting. [MacKay Tr. 16.] Reading from a prepared statement, MacKay testified that he "had decided sometime before hand that [he] wanted [his] company to buy some of the books and donate them to charity but [he] wanted to wait for an appropriate

occasion." [*Id.*] MacKay decided that in lieu of an honorarium, New England Life would "purchase the books and donate them to a Boston public school to express my company's appreciation for Congressman Wright's appearance at the meeting." [*Id.*] New England Life purchased $1,000 worth of books shortly after Wright's appearance. [MacKay Tr. 15.] MacKay received the books and delivered them to the Jeremiah Burke High School in Boston. [MacKay Tr. 16.] The memo from Campbell-Raupe to Wright and his wife, described above, indicates that Wright knew the books were purchased in lieu of an honorarium. [Exhibit C-20.] Wright had received an honorarium for a previous appearance on behalf of New England Life in 1980. [MacKay Tr. 18-19.] This time, he received $550 for the "sale" of books to New England Life.

The $550 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Alternatively, even if the income is a royalty, it is still outside earned income because it was Wright's honorarium for his speech on behalf of New England Life. Therefore, Wright violated Rule XLVII. In either case, Wright also violated Rule XLIV for failing to disclose the income as outside earned income on his 1984 Financial Disclosure Statement.

(c) Satellite Broadcasting and Communications Association ("SBCA")

Wright appeared at an SBCA trade show in September, 1985. His appearance was arranged by SBCA's legal counsel, Brown & Finn. [Hewitt Tr. 9.] Charles Hewitt, President of SBCA, testified that Wright did not receive an honorarium, but Brown & Finn suggested to SBCA that they purchase Wright's book for distribution at the trade show. [Hewitt Tr. 9-10.] Hewitt said that the organization purchased 1,680 copies of his book for $10,000, in August, 1985, shortly before Wright's September 1985 appearance. [Hewitt Tr. 13.] To the best of Hewitt's recollection, the books were purchased to distribute information on Wright to the attendees and to demonstrate the organization's support for Wright. [Hewitt Tr. 9-10.] Hewitt testified that a congressman who appears at an SBCA event usually is paid an honorarium and expenses. [Hewitt Tr. 12.] In this case, Wright received $5,500 pursuant to the terms of his royalty contract.

The $5,500 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Even if the income is a royalty, it is still outside earned income because it was Wright's honorarium for his speech on behalf of SBCA.

Therefore, Wright violated Rule XLVII, clause 1. In either case, Wright also violated Rule XLIV for failing to disclose the income as outside earned income on his 1985 Financial Disclosure Statement.

Moreover, Wright violated 2 U.S.C. § 441i, which prohibits a Member from keeping a single honorarium in excess of $2,000.

(d) National Association of Realtors ("NAR")

Wright spoke at the April 1985 legislative meeting of NAR, a registered lobbying organization. [Driesler/Judd Tr. 23.] Stephen Driesler, Senior Vice-President of Governmental Affairs and Custodian of Records for NAR, testified that a check was written to Wright on April 17, 1985 for $2,000 and subsequently voided. [Driesler/Judd Tr. 23.] The voided check's notation indicated that it was an "honorarium for speaking at April legislative meeting." [Driesler/Judd Tr. 23.] Driesler does not know why the check was voided. [Driesler/Judd Tr. 15, 23; Exhibit C-24.] A second check was written to Madison Publishing on May 15, 1985, also for $2,000. [Driesler/Judd Tr. 23-24.] Judi Judd, an administrative assistant, testified that she ordered the books from Madison Publishing. [Driesler/Judd Tr. 12.] Judd testified that she was asked by Joe Winkleman, at the time NAR's Vice President for the Political and Legislative Liaison Division, "how many books could be purchased for x amount of dollars. . . . And he asked me to order the books." [Driesler/Judd 12; *see also id.* 23-24.] In a previous appearance before NAR in 1981, Wright had received either a $1,000 or $2,000 honorarium. [Driesler/Judd Tr. 23.] NAR routinely offered honoraria to Members of Congress who spoke at NAR events. [Driesler/Judd Tr. 21.] Judd testified that she has a "vague recollection" of receiving the books. [Driesler/Judd Tr. 15.] Wright received $1,100 from this "sale" under the terms of his contract with Madison Publishing. The $1,100 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. However, even if the income is a royalty, it is still outside earned income because it was Wright's honorarium for his speech on behalf of NAR. Therefore, Wright violated Rule XLVII, clause 1. In either case, Wright also violated Rule XLIV for failing to disclose the income as outside earned income on his 1985 Financial Disclosure Statement.

(e) National Association of Arab Americans ("NAAA")

On May 21, 1985, Wright was the guest speaker at a luncheon sponsored by the NAAA, a lobbying organization concerned with

Middle East policies. [Moses Tr. 12, 21.] George Moses,[49] President of the NAAA, testified that it appears Wright was not paid an honorarium for his appearance.[50] [Moses Tr. 21.]

However, on July 5, 1985, the NAAA wrote a check to Madison Publishing for $1,999.20, for the purchase of 336 copies of Wright's book. [Moses Tr. 28; Exhibit C-25.] Moses testified that he talked to David Sadd, Executive Director of the NAAA at the time of the book purchase and to Joe Chamy, a former member of the Board of Directors. [Moses Tr. 16.] Both Sadd and Chamy told Moses that the book purchase was unrelated to Wright's speech. [Moses Tr. 23-25.] The NAAA paid 31 speakers honoraria, ranging from $500 to $2,000, from 1983-1988. [Exhibit C-26.] Here, Wright received $1,099.56 in "royalties" instead.

The $1,099.56 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Alternatively, even if the income is a royalty, it is still outside earned income because it was Wright's honorarium for his speech to the NAAA. Therefore, Wright violated Rule XLVII, clause 1. In either case, Wright also violated Rule XLIV for failing to disclose the income as outside earned income on his 1985 Financial Disclosure Statement.

(f) Van Liew Capital

In April 1985, Campbell and Raupe, a government relations firm, arranged for Wright to speak to Van Liew Capital's clients. [Van Liew Tr. 7.] Alfred Van Liew, Managing Partner of Van Liew Capital, testified that he sent letters to Wright and to Campbell and Raupe, confirming Wright's September 20-21, 1985 appearance and his $2,000 honorarium. [Van Liew Tr. 12.]

Sometime before September 20, 1985, Van Liew was informed by Debbie Imondi, his Vice President of Administration, that because a congressman's outside income was limited by law, Van Liew Capital could not pay Wright directly, but instead could purchase his book. [Van Liew Tr. 14-16.]

In September 1985, Van Liew Capital wrote a $2,000 check to Madison Publishing Company. [Exhibit C-27; Van Liew Tr. 17.] Van

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[49] Moses was not employed by the NAAA at the time of Wright's speech, and has no personal knowledge of the events surrounding the purchase of the book. [Moses Tr. 17.]

[50] Another congressman received a $1,000 honorarium for speaking at the same event.

Liew testified that the purpose of purchasing the books was "to pay $2,000 for what we were looking for and that was the man's time and later learned that it would include books." [Van Liew Tr. 17.] Furthermore, the Campbell-Raupe memo to Wright and his wife, described above, once again indicates that Wright knew the books were purchased in lieu of an honorarium. [Exhibit C-20.] Wright received $1,100 for this "sale" of books pursuant to the terms of his "royalty" contract.

Van Liew Capital never received any books. [Van Liew Tr. 18.] Van Liew testified that "[w]e didn't want them by the time we knew we weren't getting them." [*Id.*]

The $1,100 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Alternatively, even if the income is a royalty, it is still outside earned income because it was Wright's honorarium for his speech on behalf of Van Liew Capital. Therefore, Wright violated Rule XLVII, clause 1. In either case, Wright also violated Rule XLIV for failing to disclose the income as outside earned income on his 1985 Financial Disclosure Statement.

As Van Liew did not receive the books, those books were a gift to Wright who apparently sold them again. [*See Infra* Section III. C.3.e.] Wright thus violated Rule XLIV for failing to disclose the gift on his 1985 Financial Disclosure Statement.

(3) Other Types of Bulk Purchases

(a) The White Consulting Group

The White Consulting Group, a lobbying organization, purchased 1,031 books on February 15, 1985 for $7,495.27 to send to members of the Texas Legislature and friends. [White Tr. 7, 9.] John C. White, President of the White Consulting Group, testified that he and Moore combined several mailing lists including members of the Texas legislature, and other "old Texas Democrats." [White Tr. 12, 15.] White testified that Moore mailed the books to the people on the mailing list. [White Tr. 13.] White testified that the amount paid reflected the price of the book, plus additional handling and mailing charges, although he did not know how the money was allocated between the cost of the books and the cost of the additional expenses. [White Tr. 13.] Madison Publishing is also unable to [illegible] the costs due to poor recordkeeping. White assumes the books were mailed by Moore as agreed because White received a few thank you notes from people who had received the book. [White Tr. 10, 14.] Wright received

$4,122.25 from this "sale" under the terms of his contract. Wright did not give a speech to the White Consulting Group. Moore testified that he does not recall sending 1,031 books to people on a list he compiled with White. Rather, Moore testified that he delivered the books to White. [Moore III Tr. 103.] However, Moore does remember sending books to members of the Texas state legislature. [Moore III Tr. 177-78.]

The $4,122.45 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Furthermore, Wright violated Rule XLIV for failing to disclose the income as outside earned income on his 1985 Financial Disclosure Statement.

(b) S. Gene Payte ("Payte")

Payte, a Fort Worth real estate developer, wrote but never sent a letter to Dee J. Kelly, Chairman of the Wright Congressional Club. [Exhibit C-28; Payte Tr. 18.] The letter stated: "Enclosed you will find a check made payable to Jim Wright .... [T]his is a personal gift and not a political contribution as a token of my appreciation for the past support he has given his constituents and for helping the city of Fort Worth." [Exhibit C-28.] Payte testified that he wanted to give Wright a cash gift. [Payte Tr. 17-18.] Payte attemped to hand deliver the letter to Kelly at a meeting, but didn't have an opportunity. [Payte Tr. 19.] Wright's wife, Betty, was also at the meeting, so Payte gave her the letter and the check. [*Id.*] Mrs. Wright expressed some doubt as to whether Wright would be able to accept the gift due to House rules, although she kept the letter and the check. [Payte Tr. 19.] Subsequently, Wright informed Payte that he could not accept the gift and returned the check to Payte. [Payte Tr. 19, 22-23.]

Payte contacted his attorney, Tom Law.[51] Law and Payte continued to search for a way to help Wright. Law suggested that instead of giving Wright cash, Payte "make a contribution to support bringing one of Jim's books up to date with a new edition." [Payte Tr. 22; Exhibit C-29.] Accordingly, on March 9, 1987, Payte wrote a $5,000 check to Madison Systems Corporation for "revision and distribution of Wright's books." [Payte Tr. 23, Exhibit C-30.] Payte wrote a second check to Madison Publishing for $1,000 on August 7, 1987. [Exhibit C-31.] Payte testified that as he had represented to people that he had paid for 1,000 books, he paid the extra thousand dollars to cover the balance of the cost of 1,000 books. [Payte Tr. 40-41.] Payte

[51] Tom Law is also the trustee for the James C. Wright, Jr. Blind Trust. [*See* Section III. E.3.e. of this Report.]

testified that he intended the money be used to update *Reflections of a Public Man* to reflect Wright's new status as Speaker of the House and to purchase copies of the "new" book. [Payte Tr. 25-26.] Under his contract, Wright received $3,300 for the "sale" to Payte.

Payte also wrote to his friends and associates asking them to place pre-production orders for the updated book. [Payte Tr. 29-30]. In that letter, Payte wrote that "[t]he proceeds from the sale of these books go directly to Jim Wright as author and will be used for his personal use." [Payte Tr. 30; *see also* Exhibit C-32.] The only printing of *Reflections Of A Public Man* was the original printing. Moore never updated the book. [Moore III Tr. 174-75.] Although he is equivocal on the point in his testimony, Payte testified that he only received between 300 and 500 copies of the "old" book for his $6,000, and would still like to receive the new books. [Payte Tr. 77.]

The $3,300 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Wright violated Rule XLIV for failing to disclose the income as outside earned income on his 1987 Financial Disclosure Statement.

As Gene Payte did not receive the books, the books were a gift to Wright. Thus Wright violated Rule XLIII, clause 4 and also Rule XLIV for failing to disclose the gift on his 1987 Financial Disclosure Statement.

(c) DRIVE Political Fund

Charles Haddock, Secretary-Treasurer and Business Manager of the General Drivers Warehousemen of Local Union 745, affiliated with the Texas Conference of Teamsters, testified that in 1986 Moore and he discussed the possibility of the Teamsters purchasing a bulk quantity of books. He suspected that Moore made the initial contact. [Haddock Tr. 12.] Haddock recalled contacting Jackie Presser, President of the Teamsters, and suggesting that the national union buy Wright's book to distribute to its membership. [Haddock Tr. 13.] Haddock felt the membership should be aware of "who the fellow is that probably is going to be the next Speaker." [Haddock Tr. 13.] The Teamsters' DRIVE Political Fund purchased 1,000 books on February 22, 1985, at $5.95 each, for $6,100. [Haddock Tr. 13-14.] This purchase was made just two days after DRIVE Political Fund had contributed $10,000 to Wright's campaign. [Exhibit C-33.] Moreover, when the Teamsters had no more books, DRIVE Political Fund purchased another 1,000 books on February 19, 1986 for $6,100. [Haddock Tr. 14.] Haddock testified that the 2,000 books purchased by the national organization were passed out at local union meetings. [Haddock Tr.

18.] He said the Teamsters have approximately 50-100 books which have not yet been distributed. [*Id.*] Under his contract with Madison Publishing, Wright received $6,710 from this "sale" of books.

Haddock also issued a $4,112.50 check to Madison Publishing on October 19, 1987. However, when Moore first testified before the Committee, the check was unavailable and Moore could not recall whose check for $4,112.50 had been deposited into the Madison Publishing account. [Moore II Tr. 291-92.] Nor could he explain a Madison Publishing check paid to cash for $4,112.50 on the same date. [*Id.*]

In his second appearance before the Committee, after we had retrieved a copy of the check, Moore was confronted with the identity of the payor of the check, the Teamsters Business Agent Fund. Moore testified that he still could not remember why he had received and deposited that check into the Madison Publishing account. The check is made payable to Carlos Moore and is signed by Haddock. Moore again could not remember why he withdrew the same amount in cash that same day. Moore requested that he be able to "reserve the right to give you a better explanation . . ." [Moore III Tr. 182.] The next day, Moore testified that the check was payment for consulting work and printing services, and that he "inadvertently put the money into the wrong account." [Moore IV Tr. 4.] Moore testified that when he discovered his mistake, he "took the money out" in cash because he "probably wanted to spend it." [Moore Tr. IV 4-5.]

Haddock also sent copies of the book to various local unions around Texas and in the south, suggesting that they purchase books to distribute to their membership to educate their members about the next Speaker of the House. [Haddock Tr. 18.] On February 12, 1986, Haddock wrote to Moore informing Moore that he had sent 30 letters to various local unions in Texas, Louisiana, Oklahoma and Arkansas, as well as various labor leaders and friends, suggesting that they purchase Wright's book. [Haddock Tr. 19; Exhibit C-34.] The 30 letters, written on Local 745 stationery, stated that:

> It would be a way of helping Congressman Wright and at the same time letting others know of just who this man is and what he stands for.

[Exhibit C-34.]

Haddock testified that he thought book purchases would boost Wright's political image and would spread Wright's name. [Haddock

Tr. 21.] Haddock also testified that he was aware that Wright received a royalty from book sales and that book sales would help Wright financially. [Haddock Tr. 45.]

The $6,710 Wright received from these book "sales" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Furthermore, Wright violated Rule XLIV for failing to disclose the income as outside earned income on his 1985 and 1986 Financial Disclosure Statements.

(d) Ocean Spray

In January 1985, Gerald Cassidy, President of Cassidy & Associates, a lobbying organization, testified that he was contacted by Marshall Lynam. [Cassidy Tr. 11.] Lynam explained to Cassidy that "they were trying to get the book out to opinion leaders" and "business people." [*Id.*] Lynam asked if Cassidy or his clients would be interested in purchasing the book. [*Id.*] Cassidy testified that "[t]hey thought because of my clients and people I knew I might be able to get books out to people like that. They asked could I do that, would I be interested in buying some books and sending them to people like that. . . . I asked what other people . . . were buying. . . . I think he said that some people had bought 1000 books." [Cassidy Tr. 11-12.]

Cassidy contacted Harold Thorkilsen, then president of Ocean Spray Cranberries, Inc. [Cassidy Tr. 18; Thorkilsen Tr. 6.] Thorkilsen testified that he read the book and told Cassidy to order 840 copies of the book to distribute to Ocean Spray's Board of Directors, key members of management, and owners.[52] [Thorkilsen Tr. 7, 10.] Ocean Spray issued a $5,000 check to Madison Publishing for the books which it sent to Cassidy. [Thorkilsen Tr. 11.] Ocean Spray received the books. [Thorkilsen Tr. 10.] Wright received $2,750 for the "sale" of books pursuant to his contract.

The $2,750 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Furthermore, Wright violated Rule XLIV for failing to disclose the income as outside earned income on his 1985 Financial Disclosure Statement.

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[52] In November, 1985, Ocean Spray also purchased books in lieu of giving Wright an honorarium. That purchase is discussed in Section III. C.3.d.(1)(d) of this Report.

(e) Delbasin Corporation

Dee J. Kelly, Chairman of the Wright Congressional Committee and general counsel to the Bass family which owns Delbasin, was contacted by Moore or Phil Duncan. [Kelly Tr. 12.] It was suggested to Kelly that Wright's book would be a "good gift to send out at Christmas." [*Id.*] Kelly called Perry Bass, who agreed to purchase $2,500 worth of books. [*Id.*] Kelly received a check for $2,508 on December 21, 1984. [Kelly Tr. 14.] After receiving the books, Kelly testified that he sent a copy of the book to every member of the Wright Congressional Club. [Kelly Tr. 15.]

The $1,379.40 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Furthermore, Wright violated Rule XLIV for failing to disclose the income as outside earned income on his 1984 Financial Disclosure Statement.

(f) Charlene Bice

Charlene Bice is a member of the Board of Directors of the National Education Association ("NEA"), a lobbying organization. [Bice Tr. 9.] She also acts as a liaison between Wright and Texas teachers, lobbying him to support certain education legislation. [Bice Tr. 11-12.] Bice testified that after seeing Wright's book, she "wanted one in every library in Texas." [Bice Tr. 18.] Bice testified that, at the suggestion of Phil Duncan, she arranged for Moore to give her 200 books on consignment to sell to Texas teachers. [Bice Tr. 19-20.] She sold approximately 100 to 125 books for $5.95 each plus $.35 in sales tax in 1985 and 1986. [Bice Tr. 20.] Bice testified that she was usually paid in cash and therefore kept the cash and wrote a personal check for the total amount to Madison Publishing. [Bice Tr. 19, 24.] Wright received approximately $346.50 from the "sale" of these books.

The approximately $346.50 Wright received from these book "sales" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Furthermore, Wright violated Rule XLIV for failing to disclose the income as outside earned income on his 1985 and 1986 Financial Disclosure Statement.

(g) Bernard Rapoport

Bernard Rapoport, Chairman and CEO of the American Income Life Insurance Company, purchased approximately 1,000 copies of Wright's book for $6,269.82 on February 24, 1986, apparently to give as gifts. [Rapoport Tr. 9.] Rapoport states that he is a bibliophile who

regularly gives books as gifts. He produced a list of books as well as a list of 2,100-2,200 people to whom he sends a book every year. [Rapoport Tr. 10, 13.] Wright received $3,448.40 from the "sale" of these books.

The $3,448.40 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Furthermore, Wright violated Rule XLIV for failing to disclose the income as outside earned income on his 1986 Financial Disclosure Statement.

(h) Dr. Gene Wood

Wood, an orthodontist in Fort Worth, Texas, testified that he gave Moore $500 in August, 1987 for the republishing of some of Wright's books. [Wood Tr. 10.] Wood had previously given Wright the maximum $1,000 campaign contribution. [*Id.*] However, instead of using Wood's money to republish the book, Moore sent Wood approximately 80 books. [Wood Tr. 12-13.] Wright received $275 from the "sale" of these books. Wood was an uncooperative witness and thus the hearing was terminated before Wood's purchase of Wright's book was fully explored.

The $275 Wright received from this book "sale" was not royalty income, but outside earned income in violation of Rule XLVII, clause 1. Furthermore, Wright violated Rule XLIV for failing to disclose the income as outside earned income on his 1987 Financial Disclosure Statement.

(i) Others

Finally, several organizations which purchased Wright's book refused to testify on the grounds that testifying regarding the purchase of books would violate their first amendment rights and that the information sought was not pertinent. They are DRIVE PAC, which purchased $12,200 worth of books on March 4, 1985, and March 7, 1986; Yordi Construction Company, which purchased $1,000 worth of books on April 10, 1986; and the International Brotherhood of Boilermakers, which purchased $2,975 worth of books on April 4, 1985.

TABLE C-1

SUMMARY OF WRIGHT'S VIOLATIONS

OUTSIDE EARNED INCOME AND GIFTS

(Assuming Income Is Not "Copyright Royalty")

Year	Source of Income	Amount Paid To Madison Publishing	Amount Received by Wright
1984	Southwest Texas State University	$ 3,000.00	$1,650.00
	1. Violation of Rule XLVII, cl.1		
	2. Violation of Rule XLIV		
1984	New England Mutual Life Insurance Company	$ 1,000.00	$ 550.00
	3. Violation of Rule XLVII, cl.1		
	4. Violation of Rule XLIV		
1984	Delbasin Corporation	$ 2,508.00	$1,379.40
	5. Violation of Rule XLVII, cl.1		
	6. Violation of Rule XLIV		
1985	Hamel & Park	$ 2,000.00	$1,100.00
	7. Violation of Rule XLVII, cl.1		
	8. Violation of Rule XLIV		
1985	Ocean Spray Massachusetts Growers	$ 2,000.00	$1,100.00
	9. Violation of Rule XLVII, cl.1		
	10. Violation of Rule XLIV (failure to disclose outside earned income)		
	11. Violation of Rule XLIII, cl.4		
	12. Violation of Rule XLIV (failure to disclose gift)		
1985	Satellite Broadcasting and Communications Association	$10,000.00	$5,500.00
	13. Violation of Rule XLVII, cl.1		
	14. Violation of Rule XLIV		
	15. Violation of 2 U.S.C. § 441i		
1985	National Association of Realtors	$ 2,000.00	$1,100.00
	16. Violation of Rule XLVII, cl.1		
	17. Violation of Rule XLIV		
1985	National Association of Arab Americans	$ 1,999.20	$1,099.56
	18. Violation of Rule XLVII, cl.1		
	19. Violation of Rule XLIV		

Year	Source of Income	Amount Paid To Madison Publishing	Amount Received by Wright
1985	Van Liew Capital	$ 2,000.00	$1,100.00
	20. Violation of Rule XLVII, cl.1		
	21. Violated Rule XLIV (failure to disclose outside earned income)		
	22. Violated Rule XLIV (failure to disclose gift)		
1985	White Consulting Group	$ 7,495.37	$4,122.45
	23. Violation of Rule XLVII, cl.1		
	24. Violation of Rule XLIV		
1985, 1986	DRIVE Political Fund	$12,200.00	$6,710.00
	25. Violation of Rule XLVII, cl.1		
	26. Violation of Rule XLIV		
1985	Ocean Spray	$ 5,000.00	$2,750.00
	27. Violation of Rule XLVII, cl.1		
	28. Violation of Rule XLIV		
1985, 1986	Charlene Bice	$ 630.00	$ 346.50
	29. Violation of Rule XLVII, cl.1		
	30. Violation of Rule XLIV		
1985	Dr. Gene Wood	$ 500.00	$ 275.00
	31. Violation of Rule XLVII, cl.1		
	32. Violation of Rule XLIV		
1986	Fertilizer Institute	$ 2,023.00	$1,112.65
	33. Violation of Rule XLVII, cl.1		
	34. Violation of Rule XLIV		
1986	Mid-Continent Oil & Gas Association	$ 1,000.00	$ 550.00
	35. Violation of Rule XLVII, cl.1		
	36. Violation of Rule XLIV (failure to disclose outside earned income)		
	37. Violation of Rule XLIII, cl.4		
	38. Violation of Rule XLIV (failure to disclose gift)		
1986	Palumbo & Cerrell	$ 2,023.00	$1,112.65
	39. Violation of Rule XLVII, cl.1		
	40. Violation of Rule XLIV		

Year	Source of Income	Amount Paid To Madison Publishing	Amount Received by Wright
1986	Bernard Rapoport	$ 6,000.00	$ 3,300.00
	41. Violation of Rule XLVII, cl.1		
	42. Violation of Rule XLIV		
1987	S. Gene Payte	$ 6,000.00	$ 3,300.00
	43. Violation of Rule XLVII, cl.1		
	44. Violation of Rule XLIV (failure to disclose outside earned income)		
	45. Violation of Rule XLIV (failure to disclose gift)		
	TOTAL	$69,378.57	$38,158.21

TABLE C-2

SUMMARY OF WRIGHT'S VIOLATIONS

OUTSIDE EARNED INCOME AND GIFTS
(Assuming Income Is "Copyright Royalty")

Year	Source of Income	Amount Paid to Madison Publishing	Amount Received by Wright
1984	Southwest Texas State University	$ 3,000.00	$ 1,650.00
	1. Violation of Rule XLVII, cl.1		
	2. Violation of Rule XLIV		
	3. Violation of 2 U.S.C. § 441i		
1984	New England Mutual Life Insurance Company	$ 1,000.00	$ 550.00
	4. Violation of Rule XLVII, cl.1		
	5. Violation of Rule XLIV		
1985	Hamel & Park	$ 2,000.00	$ 1,000.00
	6. Violation of Rule XLVII, cl.1		
	7. Violation of Rule XLIV		
1985	Ocean Spray Massachusetts Growers	$ 2,000.00	$ 1,100.00
	8. Violation of Rule XLVII, cl.1		
	9. Violation of Rule XLIV (failure to disclose outside earned income)		
	10. Violation of Rule XLIII, cl.4		
	11. Violation of Rule XLIV (failure to disclose gift)		
1985	Satellite Broadcasting and Communications Association	$10,000.00	$ 5,500.00
	12. Violation of Rule XLVII, cl.1		
	13. Violation of Rule XLIV		
	14. Violation of 2 U.S.C. § 441i		
1985	National Association of Realtors	$ 2,000.00	$ 1,100.00
	15. Violation of Rule XLVII, cl.1		
	16. Violation of Rule XLIV		
1985	National Association of Arab Americans	$ 1,999.20	$ 1,099.56
	17. Violation of Rule XLVII, cl.1		
	18. Violation of Rule XLIV		

Year	Source of Income	Amount Paid To Madison Publishing	Amount Received by Wright
1985	Van Liew Capital	$ 2,000.00	$ 1,100.00
	19. Violation of Rule XLVII, cl.1		
	20. Violated Rule XLIV (failure to disclose outside earned income)		
	21. Violated Rule XLIV (failure to disclose gift)		
1986	Fertilizer Institute	$ 2,023.00	$ 1,112.65
	22. Violation of Rule XLVII, cl.1		
	23. Violation of Rule XLIV		
1986	Mid-Continent Oil & Gas Association	$ 1,000.00	$ 550.00
	24. Violation of Rule XLVII, cl.1		
	25. Violation of Rule XLIV (failure to disclose outside earned income)		
	26. Violation of Rule XLIII, cl.1		
	27. Violation of Rule XLIV (failure to disclose gift)		
1986	Palumbo & Cerrell	$ 2,023.00	$ 1,112.65
	28. Violation of Rule XLVII, cl.1		
	29. Violation of Rule XLIV		
1987	S. Gene Payte	$ 6,000.00	$ 3,300.00
	30. Violation of Rule XLIV		
	TOTAL	$29,045.20	$15,974.86

e. Total Book Sales

Madison Publishing Company grossed approximately $130,829.56 in receipts from the sale of Wright's book. [Hoeh Tr. 102.] Bulk purchases account for almost 98 percent of total book sales. [Hoeh Tr. 112.] Even though Moore opened a separate bank account for Madison Publishing, he did not establish a system to tabulate receipts received and expenses incurred from the book. [Hoeh Tr. 105.] "[T]he great majority of checks do not say that they are for book purchases or tell detail of how many books were purchased." [Hoeh Tr. 106.] Due to this poor recordkeeping, it is impossible to determine exactly the number of books that were sold. [Hoeh Tr. 109.] It is also impossible to determine the price paid for books, when payment was made, and how many books were delivered to the purchaser. [Hoeh Tr. 109.] However, according to Richard P. Hoeh, approximately 21,218 books were sold. [Exhibit C-19.] Hoeh's calculations reflected information provided to Special Outside Counsel by many of the bulk purchasers which indicates the price paid per book. [*Id.*] Hoeh testified that if some books were sold at a discount of 48 percent or for a flat rate of $3.00, the receipts would indicate a larger number of books sold. [Hoeh Tr. 109, 111.]

Furthermore, Moore did not keep records separating income paid for books, and money collected for sales tax, and shipping and handling charges. [Hoeh Tr. 109.] Moore testified that it would be impossible for him to determine the freight charges because he had discarded the bills of lading. [Moore III Tr. 120, 125, 127, 136.]

According to Paul Martin Tonsing, owner of The Printing Center, Moore received only 19,068 copies of the book from The Printing Center. [Tonsing Tr. 18.] Tonsing's records show that Moore picked up 18 boxes of books containing 2,160 books on December 6, 1984. On December 18, 1984, Moore picked up 141 boxes of books containing 16,908 books. Therefore, Moore received 19,068 books, even though he had requested 20,000. Tonsing testified that when "we come up short, we get in touch with the customer and say, 'We are short. We will give you a credit for the shortage or we will put it back on the press and give you the full count.' Carlos evidently chose to absorb the shortage and take the discount." [Tonsing Tr. 15.] Moore received a $521.92 credit and Tonsing did not print any books in addition to the 19,068 which Moore received. [Moore IV Tr. 48-49; Moore II Tr. 369-70.] Therefore, at the very least, 2,000 more books were sold than were printed.

(1) Analysis and Conclusions

Although it is impossible to determine from Madison Publishing's records exactly how many books were sold, it is clear that the

$130,829.56 in receipts resulted from the sale of at least 21,218 books—at a minimum 2,000 more books than were printed. This fact demonstrates that when organizations such as Ocean Spray, Mid-Continental Oil & Gas, and Van Liew Capital did not take the books they paid for, Moore sold the same books again and provided Wright with additional income.

D. Wright's Use of Government Resources to Produce and Market *Reflections of a Public Man*

1. Allegations and Investigation

Wright's book, *Reflections Of A Public Man*, is a compendium of excerpts from Wright's previous writings and speeches. Its publication was an entirely personal project, producing personal income for Wright. During 1984, Matthew Cossolotto, at the time a staff assistant to Wright, worked with Wright selecting and editing material for the book and preparing the manuscript. [Cossolotto Tr. 48; Wright Tr. 29, 84.] Cossolotto also used congressional materials and resources in preparing the manuscript. [Cossolotto Tr. 174.]

The Complaint alleges that Wright's use of staff employees and other government resources to work on the book may be in violation of House Rules. In investigating this allegation, Special Outside Counsel examined Wright's testimony and obtained the testimony of nine witnesses,[53] including: Matthew Cossolotto; Phil Duncan, formerly Wright's district director in Fort Worth and currently deputy chief of staff; Craig Raupe, a late personal friend and formerly Wright's floor assistant and campaign manager; Paul Driskell, formerly Wright's district coordinator and special assistant on the leadership staff; Ben Procter, Wright's close personal friend; John Mack, formerly floor assistant for the Majority Leader's office and currently staff director of the Democratic Steering and Policy Committee; Barbara Roark, formerly Wright's floor assistant and currently managing his congressional office; Marshall Lynam, Wright's chief of staff; and Marjorie Youngblood, Wright's senior staff assistant in the district office.

Through this testimony and other related evidence, we developed facts regarding the production of the book and Matthew Cossolotto's and other staff member's participation in it. Specifically, we examined: (1) how the book project first came to the attention of Wright's staff, particularly Cossolotto; (2) how Cossolotto became involved in working on the book project; (3) Cossolotto's actual work on the book; (4) Cossolotto's trip to Fort Worth; and (5) the marketing of the book.

2. Applicable Standards of Conduct

Section 31 U.S.C. § 1301(a) states: "Appropriations shall be applied only to the objects for which the appropriations were made." As

[53] Of the nine witnesses listed, five have already been named as witnesses in Section III. C. of this Report.

applied to House staff members, this statute means that employees may not be "compensated from public funds to perform non-official, personal, or campaign activities on behalf of the Member." [Ethics Manual, pg. 21.] The Ethics Manual also provides the following guidelines:

> In the area of utilization of congressional staff, one of the important factors is that for most employees of the House, that is, those on the clerk hire rolls of a Member and those on the staff of a committee, there are no formal job descriptions or uniform work standards. Such matters relating to the general terms, conditions and the specific duties of employment have traditionally been within the discretion of the Member of the employing committee.
>
> As to the duties required of staff employees in general, however, it should be noted that the basic standard for compensation of employees of the House is that the employee has regularly performed official duties reflecting the compensation he receives.

[Ethics Manual, p. 5.]

However, the Ethics Manual notes that "once employees fulfill the official duties which they are required to perform, they may generally engage in non-official, personal or campaign activities on their free time." [Ethics Manual, p. 13.] In addition, an employee's "free time" is not necessarily relegated to hours outside the 9 to 5 work day.

> [Due] to the irregular time frame in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times, these employees may work more than double the usual work week—at others, some less. Thus employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods.

[Committee on Standards of Official Conduct, Advisory Opinion No. 2, Ethics Manual, p. 148.]

Furthermore, Section 2, Part II of the U.S. House of Representatives Congressional Handbook, prepared by the Committee on House Administration, specifies:

> An employee of a Member shall be compensated at a rate commensurate with the duties he/she performs in support of the conduct of the Member's official and representational business. (House Rule XLIII, clause 8.) Pursuant thereto, salary adjustments should reflect services performed during the particular pay period.

> Despite the absence of formal job descriptions, employees of the House are paid from funds from the United States Treasury to perform public duties. Employees are compensated to assist a Member in official responsibilities or to work on official committee business *but not to perform non-official, personal, or campaign duties.*
>
> The regulations of the Committee on House Administration provide for the certification of an employee's salary for official duties on a monthly basis. Salaries are to be disbursed to employees only *upon a monthly certification by the appropriate Member*, committee and subcommittee chairmen, or officer of the House 'as to the amount of said salary, the physical location of each employee, the regular performance of official duties, and the relationship of each employee to any current Member of Congress.' *Compensation may be received only for official duties performed by the employee within the preceding month.* Advance payment to an employee would be contrary to the regulations.
>
> The appropriation for clerk-hire allowances routinely provides that such allowances are for securing staff to provide assistance to Members in the discharge of official and representational duties.

[Emphasis added.] In addition:

> Employees are required to give a full day's labor for a full day's pay.

Code of Ethics for Government Service, 72 Stat., Part II, B12.

Thus, a member may not compensate a staff employee from public funds to perform non-official, personal or campaign activities unless the employee has completed his official duties and is on his "free time." Nor may a Member appropriate materials paid for with public funds for use in his non-official, personal or campaign activities.

3. Factual Development and Conclusions

a. Matthew Cossolotto's Background

Cossolotto grew up in northern California, attended Napa Community College and eventually received a B.A. in political science from the University of California at Berkeley. During his last two quarters at Berkeley, he interned with then Speaker of the California State Assembly, Leo McCarthy, who recommended Cossolotto for a summer internship on the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee. After his internship, Cossolotto worked as a legislative assistant for Congressman Leon Panetta for four years. In September 1981, Cossolotto

joined the Peace Corps because he "never had done any national service" and served in Sierra Leone, West Africa. [Cossolotto Tr. 31.][54]

After leaving the Peace Corps in September 1982, Cossolotto sought a position in Washington, D.C. He was hired as a writer and researcher for Wright in May 1983, and remained on Wright's staff through 1987. [Cossolotto Tr. 31; Wright Tr. 82; Driskell Tr. 62.]

Cossolotto's responsibilities in Wright's office included writing speeches, newsletters, and background memoranda, as well as performing some legislative duties. [Cossolotto Tr. 40.] Paul Driskell testified that when Wright made a public appearance, Cossolotto would provide descriptions of the groups, a list of their legislative interests, and remind Wright of the positions he had taken with regard to those issues. [Driskell Tr. 63.]

Cossolotto attended regular breakfast staff meetings, which usually included Wright, Marshall Lynam, John Mack, Paul Driskel, Barbara Roark[55] Cathy Mitchell, Wright's executive assistant and scheduler, and Charmayne Marsh, Wright's press secretary. [Cossolotto Tr. 50; Lynam Tr. 18, 49; Driskell Tr. 22.] Mike Grisso and Ben Procter, Jr. also attended "once in a while." [Cossolotto Tr. 48-50; Lynam Tr. 18.] The subject of the breakfast meetings was the upcoming day's activities. Both the congressional and leadership staffs attended. [Driskell Tr. 22.]

Cossolotto received pay raises almost every year while working for Wright, as is permitted only when the services of the individual warrant. [Congressional Handbook, Section 2 Part II, B(2).] In 1983, his starting salary was $20,000, but he received a pay raise to $24,806 shortly thereafter. In 1985 and 1986, he was paid approximately $31,000. On April 1, 1987, his salary was increased to approximately $38,000. When Wright became Speaker, Cossolotto received another increase, to $40,000. [Cossolotto Tr. 147-48.]

Cossolotto acknowledged that he was concerned about money because his wife was pregnant. [Cossolotto Tr. 181.] He stated that he left Wright's congressional office in early 1988 for a higher paying position on the House Foreign Affairs Committee. [Cossolotto Tr. 181-82.] Very shortly thereafter, ten days according to Mack and

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[54] In an apparent attempt to comment negatively on Cossolotto's credibility or reputation, Marshall Lynam testified that Cossolotto did not serve his full term of service with the Peace Corps. [Lynam Tr. 65.] Cossolotto did leave Sierra Leone before his scheduled termination date. Nevertheless, he later became President of the Peace Corps Alumni Association.

[55] Roark testified that she was only at the breakfast meetings "sometimes". [Roark Tr. 10.] However, Marshall Lynam testified that she was in attendance half the time and Cossolotto recalls her attending regularly. [Cossolotto Tr. 50; Lynam Tr. 50.]

Lynam, Cossolotto accepted his current position in corporate communications at MCI, again to earn more money. [Cossolotto Tr. 182-83.]

b. *Reflections Of A Public Man:* The Assignment

Wright first informed his staff, including Cossolotto, of the possibility of writing or compiling a book early in 1984 at a regular staff breakfast meeting. [Cossolotto Tr. 51; Mack Tr. 34; Lynam Tr. 18.] Wright said he wanted to assemble "a compendium of . . . his old writings, speeches, poems . . . excerpt these and put them into a small book and give people kind of an idea of what the Majority Leader thinks, the man who is presumably going to be the next Speaker, how he thinks, his philosophy, his ideas and thoughts." [Cossolotto Tr. 51.][56]

Cossolotto expressed interest in working on the project either immediately or shortly after he first heard of the project. He testified, "My ears kind of perked up at that point, because it was writing and I thought this would be great. I would like to work on the Majority Leader's book." [Cossolotto Tr. 51, 55, 56.]

Even though he, in a sense, volunteered to work on the project, Cossolotto assumed that the book project was part of his assigned official duties. In a statement he issued on June 6, 1988, immediately following the first newspaper account of his work on the book, he stated that Wright had assigned him to help compile and edit the book in question. Cossolotto explained, "I accepted the assignment as part of my job, and I completed the task assigned to me." [Exhibit D-1.] Cossolotto explained to Wright in a recent telephone conversation that although he volunteered for the project in the sense that he was "happy to do it," he believes the book project was part of his assigned duties. [Cossolotto Tr. 9.]

Wright testified that at least part of the work Cossolotto did for the book in reading through Wright's old speeches was already part of his official duties. [Wright Tr. 83.] Wright also testified, in apparent contradiction, that Cossolotto understood that the book project was to be done on personal time. [Wright Tr. 120.]

Paul Driskell, Wright's Special Assistant, stated that the book project was an "in-house" project because it was an "integral, if not [a] normal part of" Cossolotto's job. [Driskell Tr. 91.] Cossolotto

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[56] Cossolotto also recalls Wright stating at the same breakfast meeting that income from the book would not be covered by the cap on honoraria. [Cossolotto Tr. 51-52, 129-30, 171.] Mack and Lynam recall the meetings, but not Wright's statement about income from the book. This issue is discussed in full in Section III. C. of this Report.

routinely, as part of his staff duties, pulled together articles and speeches in preparing Wright for his public appearances.[57]

(1) Analysis and Conclusions

While Cossolotto expressed interest in working on the book project and apparently did volunteer to work on it, he believed the work was nevertheless done as part of his assigned duties. [Cossolotto Tr. 9.] His expression of interest does not suggest anything more than a request to be assigned to a particular staff project. Furthermore, Wright never told Cossolotto that the book project was a personal, after-hours-only project to be done for Wright's personal gain. Neither Cossolotto nor Wright recall an explicit instruction that the work not be done on office time. [Cossolotto Tr. 60; Wright Tr. 120.] The lack of such an instruction by Wright indicates that Wright assigned Cossolotto to do a personal job without indicating that he was to do it on personal time.

c. Gathering Material For The Book

Cossolotto began working on the book project shortly after being assigned to it. He met with Wright privately to discuss the book project and how he should proceed. [Cossolotto Tr. 55-56.] Wright suggested that Cossolotto look through his previous books, *You and Your Congressman*, *Of Swords and Plowshares* and an essay, *Congress and Conscience*. [Cossolotto Tr. 55-57, 62.] Cossolotto stated that Wright told him that some people in Fort Worth were helping with the book. He noticed during this meeting that Wright had already marked up some excerpts of his old writings for possible use in the book. [Cossolotto Tr. 56.]

In the next several months, Cossolotto read through Wright's materials. Cossolotto characterized the amount of time he spent accumulating material for the book as "every once in a while." [Cossolotto Tr. 58.] He stated that "it was not something I spent a lot of time with at any one point in time. . . . [E]very once in a while I would go to the file and pull up some speeches and look at them . . . take some things home and look at them." [Cossolotto Tr. 58.]

During those same months, Wright would sporadically give Cossolotto possible material for the book, sometimes at the morning meetings. He estimates he met with Wright between six and ten times, in addition to the regular breakfast meetings, from the

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[57] Mack recalls that Cossolotto volunteered to work on the book at a breakfast meeting. [Mack Tr. 35-36.] Lynam believes that Cossolotto volunteered for the book project, although he did not actually hear him volunteer. [Lynam Tr. 19.]

inception through the end of the project in November. [Cossolotto Tr. 59.]

Although Lynam was usually present at the breakfast meetings, Lynam testified that he recalls the initial discussion of the book but does not recall any further discussions between Wright and Cossolotto regarding the book. [Lynam Tr. 21-22.]

Cossolotto testified that his work on the book was part of his required work week, but he cannot specifically identify at what time of day or night he worked on the book, or how he allocated the book work between office and personal time. [Cossolotto Tr. 60, 76.] He did not keep a time log with regard to his work on the book. [Cossolotto Tr. 61.] He recalled working after-hours on the book, including evenings and weekends, although no care was taken to keep staff time and personal time separate. [Cossolotto Tr. 60, 76.]

Cossolotto emphasized that "the concept of after hours really doesn't apply too rigorously to staff work. It is difficult to say what after hours is. But I did do something in the evenings on the book." [Cossolotto Tr. 61.] However, as mentioned above, Cossolotto does not recall receiving, and Wright cannot recall giving, an instruction not to work on the book during office hours. [Cossolotto Tr. 60; Wright Tr. 120.] Wright thought the instruction not to work on the book during office time was clearly implied. Wright testified that all his staff members realize that "certain things were done on their own time." [Wright Tr. 120.]

Marshall Lynam testified that he saw Cossolotto working on the book in the "latter part of the afternoons after things calmed down in the office." [Lynam Tr. 20-21.] Paul Driskell testified that he saw Cossolotto in the leadership office only in the evenings, and thus assumes that he worked on the book in the evenings. [Driskell Tr. 47.] However, Driskell acknowledges that Cossolotto and Driskell may have been in the leadership office at the same time without so knowing. "But, it seemed to be in the evening, sixish or sevenish is when he seemed to show up, either to collect handwritten or typed materials Wright had put together or to drop things off." [Driskell Tr. 47.]

Cossolotto testified that he received assistance with the book project from various staff members. He entered the passages selected for the book into the word processor, occasionally with the assistance of Mike Grisso, until an entire manuscript had been completed. [Cossolotto Tr. 64, 101, 174.] Dorothy Biard, the office librarian and Cathy Mitchell, Wright's executive assistant and scheduler, assisted in gathering and locating material. [Cossolotto Tr. 57, 174.] Furthermore, Cossolotto testified that the materials he used, such as paper,

pencils, the computer and the filing system, were congressional resources. [Cossolotto Tr. 61.]

Marshall Lynam testified that he was not aware of secretaries or clerical staff assisting in gathering material for the book, although he acknowledged that staff members would "feel free to turn to anybody in the office and say, 'I need some help. . . .' " [Lynam Tr. 21.] Other staff members had a limited role in the preparation of the book as well. Marshall Lynam, Wright's Chief of Staff, solicited the quotes on the back of the book. [Lynam Tr. 32.] Charmayne Marsh, Wright's press secretary, had some input into the photograph used on the cover of the book. Furthermore, as discussed fully in Section III. C. of this report, Marshall Lynam and Cathy Mitchell participated in the marketing of the book. [Lynam Tr. 47-49; Pettit Tr. 11.]

(1) Analysis and Conclusions

Cossolotto's work gathering material for editing and completing the manuscript was apparently performed on both office and personal time beginning early in 1984. Cossolotto generally worked more than forty hours a week, including some evenings and weekends. No attempt was made to ensure that the work on the book was done only on personal time, because the importance of that distinction was not indicated when the assignment was given and Cossolotto viewed the assignment as part of his official work. [Cossolotto Tr. 9, 60; Wright Tr. 120.] It is impossible to determine if the personal time Cossolotto worked adequately compensated for the time he worked on the book during office hours. Therefore, we cannot conclude that his work on the book prevented Cossolotto from doing a full day's work "on government business" for his "full day's pay."

Moreover, so long as Cossolotto had fulfilled all his official duties for any given period of time, he was free to engage in non-official or personal activities for Wright, even if his performance of the personal activities occurred during the regular business day. [*See* Ethics Manual, p. 23.] Since no record exists of precisely what projects Cossolotto worked on at specific times, it is impossible to determine whether he had fulfilled all his official duties before working on Wright's book.

The time expended on the book project by other members of Wright's staff appears to have been so minimal that it cannot be said that they did not perform these functions in addition to their official duties. In addition, although personal use of government property is technically a violation of 31 U.S.C. § 1301(a), Cossolotto's use of these government resources appears to have been so minimal that no purpose would be served in acting on this violation.

d. The Trip to Forth Worth

After the manuscript had been completed, Wright asked his friend Ben Procter, an American History professor at Texas Christian University, to look it over and give his reaction and comments. [Procter Tr. 12.] Procter read it and told Wright he thought it was publishable, although it needed to be edited for typographical and grammatical errors. [Procter Tr. 15.]

As a result, in early October, Cossolotto received a telephone call in Washington from Wright. [Cossolotto Tr. 98.] Cossolotto testified that Wright informed him that he was calling from Ben Procter's house and that Ben Procter had looked over the manuscript. Wright asked Cossolotto if he would come down to Fort Worth to work on the book in its final stages. [Cossolotto Tr. 98-100.] He responded that he would be delighted to go to Fort Worth to help out. [Cossolotto Tr. 98.] Cossolotto believed the primary purpose of the trip was to finish the book project. He testified that when Wright asked him to come to Fort Worth, they talked about "the fact that [Wright] would be there during the campaign period, and that might be a good time for me to come down, while he was in Fort Worth, the publisher was in Fort Worth. And if I were there, we could finish the project. I think he said something about the three of us being there." [Cossolotto Tr. 105.] Cossolotto does not recall Wright suggesting that Cossolotto go to Fort Worth to acquaint himself with the people and the area. [Cossolotto Tr. 105.] However, Cossolotto testified that he had been eager to go to Fort Worth to familiarize himself with the district, and recalls having discussed taking such a trip with Marshall Lynam. [Cossolotto Tr. 79, 106.] Cossolotto did not return to Washington until the book was completed. [Cossolotto Tr. 137.]

Wright recounted his version of the telephone call from Ben Procter's house. He testified that he asked Matthew Cossolotto to travel to Fort Worth primarily because Cossolotto wanted to become familiar with Wright's district. Knowing that Cossolotto wanted a trip to Fort Worth and knowing that the book manuscript needed some changes, Wright asked him to come to Fort Worth. As Wright explains:

> He thought that he was writing copy for me and I was going out and using some of the factual data he had gotten but not expressing it in quite the way he had written it. That is quite true; I say it in my own words. So he wanted to go with me to places where I make speeches during the campaign and to civic groups . . . in order that he could get the flavor of the hometown, get a sense of how people down there feel and react. He had never been there. So I said fine. While he was there . . . he took

> the articles that Carlos [Moore, the book's publisher] had put in galley proof form and he ... organized them into component groupings, chapters ....

[Wright Tr. 84-85.][58]

Cossolotto had asked various staff members at different times if he could go to Wright's district to get acquainted with the people and the area. Marshall Lynam testified that Cossolotto had made numerous requests to go to Fort Worth to "get the smell of the streets and find out more about the people of Fort Worth." [Lynam Tr. 24.]

Lynam testified that he finally told Cossolotto that he could go to Fort Worth for the 1984 election. Lynam explained to him that "[t]here is plenty of work to do in our congressional office. You can work there. We have a campaign going. You can volunteer to work in the campaign if you want to." [Lynam Tr. 24.] Lynam did not specifically mention the book project, but acknowledged that he knew that Cossolotto was working on the book at that time. [Lynam Tr. 24.]

Cossolotto also told Phil Duncan in late August or early September that he had not been to Texas, that he had talked to Marshall Lynam about going to Texas, and that Lynam had approved. [Duncan Tr. 95.] Duncan explained that Matthew Cossolotto had discovered that Wright—

> is a very good writer himself and a hard person to write for and he tends to re-write and brutally edit anything anybody attempts to write for him. Matthew was realizing that his speeches were not being delivered as written, and it is a painful thing to realize, but he decided that it would help him to see the actual delivery of those speeches, or some of those speeches, and he knew that there was going to be a stay in Fort Worth where a lot of speeches would be compressed into a short period of time.

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[58] Procter recalls the conversation between Wright and Cossolotto differently. He states that Wright said something like: "I am with Ben Procter, who has been consulting with me concerning the publication of a manuscript regarding my philosophy, as well as my reflections as a public man. I was wondering if you could help me get this manuscript in better shape; it would mean sacrificing several of your weekends." [Cossolotto Tr. 102; Affidavit of Ben Procter.]

Wright does not allege that Cossolotto did not help in preparing the manuscript from the beginning, as is the implication of Procter's statement. Rather, Wright acknowledges that Cossolotto helped him pull his writings together from the beginning of the project. [Wright Tr. 29.] Procter has since testified that his affidavit was based on only one side of a conversation and that he did not know Cossolotto had been working on the book. Procter testified that "[e]ither he [Wright] didn't want me to know it; I don't know whether he did or not. He didn't tell me that Matthew had been working on it." [Procter Tr. 26.]

[Duncan Tr. 95-96.] Cossolotto asked Duncan to recommend an "advantageous" time for him to go to Fort Worth. Duncan remembers recommending mid-October through the first week in November. [Duncan Tr. 96.]

e. Cossolotto's Activities in Fort Worth

While in Fort Worth, Cossolotto admittedly spent virtually all of his working hours at or near Wright's district office. Lynam had instructed him to be in the district office by 9 a.m., the same time as the district staff. [Cossolotto Tr. 136-37.] Cossolotto did not have a particular project in the office except for the book. He believes the primary purpose for his trip to Fort Worth was to finalize the book. However, he remembers working on the book only about one third, or for 40 to 50 hours, of the three week period that he was in Fort Worth. [Cossolotto Tr. 134-137.] Cossolotto often worked on the book in the district office, but several times met with or spoke to Carlos Moore, the book's printer. He gave Moore corrections for the manuscript and made sure Moore understood his notations. [Cossolotto Tr. 137.]

When Cossolotto was not working on the book, he set up appointments at Texas Christian University, Harris Hospital, and Tandy Corporation, to familiarize himself with Fort Worth. He set up appointments and "tried to make some useful use of the time . . . and had lunch with people on the staff and talked to people." [Cossolotto Tr. 136.] Cossolotto explained that he "stopped by Tandy to talk with some of their PR people or something, just to sort of get familiar with some institutions in the District." [Cossolotto Tr. 136.] To further get acquainted with the district, Cossolotto drove to Weatherford, Texas, Wright's hometown, and to Granbury, Texas, to meet with Craig Raupe. [Raupe Tr. 69.] Cossolotto met with Wright's district staff people, "talking to them about some of the problems and issues and how they operate, getting acquainted with the District office." [Cossolotto Tr. 116.] He considers these activities and meetings to be a part of his staff duties. [Cossolotto Tr. 135.]

Furthermore, Cossolotto testified that he told Wright recently that he recalled "having attended a couple of campaign functions" while in Fort Worth. However, Cossolotto testified that he did not do much on Wright's campaign while in Fort Worth. Cossolotto testified that he attended three events with Wright. He attended a campaign speech that Wright gave on behalf of Lloyd Doggett, a candidate for the U.S. Senate. [Cossolotto Tr. 77-78.] He attended a youth day sponsored by Tandy at a local hotel along with Wright. Finally, he and Wright attended an election night gathering at the house of George Mallick, one of Wright's main supporters. [Cossolotto Tr. 78.]

It is unclear whether Cossolotto attended the three events as a campaign volunteer, or as part of his regular staff duties of getting acquainted with Wright's district.

Wright and other staff members testified that Cossolotto had more of a role in the campaign than Cossolotto remembers. Wright testified that Cossolotto worked in the office, worked on projects related to the campaign, such as Wright's speeches, and worked on the book. In connection with the book, Wright testified that Cossolotto also met with Carlos Moore, picked up galley proofs, and compiled a table of contents. [Wright Tr. 85.]

Lynam testified that it was an "unspoken thing that he [Cossolotto] would go down [to Fort Worth] wearing three hats: as a campaign volunteer, continuing to do volunteer work on the book, and full-time in the office as a staffer." Lynam clarified that "full-time in the office" meant "at least 40 hours" a week in the congressional district office. Lynam added, "[T]here are no 40-hour weeks at election time, they tend to be 80 hours." [Lynam Tr. 25.] Most of Cossolotto's expenses incurred during the Fort Worth trip were paid for by Wright's official expense allowance and were certified by Wright.[59] [Exhibit D-3.]

Although Phil Duncan was not in Fort Worth at the same time as Cossolotto, he testified that he has a specific recollection of Cossolotto's activities during his Fort Worth trip. [Duncan Tr. 96.] According to Duncan, while Cossolotto's activities involved the book, they were by no means confined to the book. Duncan added that Wright has always given his staff a very clear admonition to put in enough work for the government to earn their salaries. [Duncan Tr. 19.] Duncan testified that the time frame he recommended to Cossolotto for his trip to Fort Worth included about fifteen appearances for Wright. Approximately one-third of those speeches included material Cossolotto had prepared for Wright. [Duncan Tr. 96.] Duncan recalls that Cossolotto attended most of those events with Wright, even though Cossolotto remembers attending only three events with Wright.[60]

Procter, who overheard Wright asking Cossolotto on the telephone to come to Fort Worth, recalls Wright specifically telling Cossolotto that he would have to "sacrifice several weekends" to complete work on the book. [Procter Tr. 18.] However, neither Wright nor Cossolotto recalled Wright making such a statement.

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[59] Cossolotto's airfare and $200 of his expenses were paid by Wright's campaign committee, the Wright Appreciation Fund. [Lynam Tr. 29, Cossolotto Tr. 118.]

[60] A list of the events Wright attended between October 22 and November 14, 1984, was subsequently submitted by Duncan's attorney, and is attached as Exhibit D-2.

By the end of the Fort Worth trip, Cossolotto estimated that he spent a total of 200 hours working on the book, including the time he spent in Fort Worth. [Cossolotto Tr. 162.] Wright estimated that the number of hours was less than 200, and that all the work on the book was done on Cossolotto's own time. [Wright Tr. 30, 122.]

(1) Analysis and Conclusions

Although the testimony regarding Cossolotto's activities while in Fort Worth differs, it appears that his work on the book while in Fort Worth consisted of no more than 50 hours over the three week period. While 50 hours constitutes a substantial amount of time, it is plausible that Cossolotto worked only 15 to 17 hours a week on the book.

Because the work week in the weeks before an election consists of considerably more than 40 hours a week, we believe that Cossolotto could have done most, if not all, of the work on the book in addition to a 40 hour week. It is, therefore, impossible to say with the required certainty that Cossolotto's work on the book while in Fort Worth deprived the government of his attention to his official duties.

f. Reaction to Matthew Cossolotto's Remarks

After news reports of Cossolotto's work on the book project, several telephone conversations took place which warrant discussion.

The day after Cossolotto's work on the book was reported, June 8, 1988, Cossolotto called Wright. [Cossolotto Tr. 7.] "He . . . asked if I might be willing to make a statement, issue an affidavit of some sort . . . . He suggested maybe in a statement I could make it clear I thought it was a very valuable project for me as his writer, that I found it useful for my . . . professional position to have done this kind of research . . . ." [Cossolotto Tr. 9-10.] Cossolotto's notes of that conversation indicate that Wright suggested that he state that he worked a lot of overtime, and that the project had a benefit for the public performance of public duties. [Exhibit D-3.] Furthermore, that same day, Cossolotto testified that he received a telephone call from William Oldaker, Wright's attorney. Oldaker said that "The Speaker says he just talked with you and you would be willing to make a statement, can we talk." Cossolotto referred Oldaker to his attorney, Tom Martin. [Cossolotto Tr. 27.]

In addition to his conversation with Wright, Cossolotto received a telephone call from Barbara Roark, Wright's office manager, in August 1988. Cossolotto testified that Roark told him:

> [E]verybody hates you in the office . . . . [y]ou told the paper that you had worked on the book . . . [S]he said something to the

> effect I ought to keep in mind where I am.... You are in Washington and where are you going to get another job? ... She said that if she were asked by the committee, she would say she didn't know anything about the book. She didn't attend the breakfast meetings where the book was discussed. ... And she said something to the effect ... that she owes that much to Wright.

[Cossolotto Tr. 18-20.] She also challenged Cossolotto's estimate that he worked on the book for 200 hours. [Cossolotto Tr. 18-24.]

Although Roark testified that she does not recall such a conversation with Cossolotto, his recollection of this conversation is confirmed by notes he wrote after the conversation ended. [Roark Tr. 11-12; Exhibit D-4.]

Finally, Procter spoke to Lynam after reading the first newspaper account of Cossolotto's assessment that he spent 200 hours on the book. Procter told Lynam that it couldn't have taken Cossolotto 200 hours.[61] Lynam requested that Procter "put this down," presumably in an affidavit. [Procter Tr. 37-38.] Procter agreed and that same day wrote and notarized a statement. [Affidavit of Ben Procter.]

(1) Analysis and Conclusions

We believe that Barbara Roark did call Cossolotto. The notes Cossolotto produced of the conversation his lack of incentive to fabricate the conversation, and Roark's extreme loyalty to Wright bolster the credibility of Cossolotto's testimony. However, while Roark may have been attempting to intimidate Cossolotto, we have no evidence of any conspiracy to threaten or intimidate him. We have no evidence that her words were prompted by Wright or other members of Wright's staff.

These telephone conversations indicate the concern among Wright and his staff upon learning of Cossolotto's remarks to the press. We have no other evidence of attempts to intimidate Cossolotto. The telephone conversations standing alone do not reach the degree of certainty required to find a violation of any law or standard of conduct.

g. Marketing the Book

John W. Pettit, a partner with the law firm of Hopkins, Sutter, Hamel and Park, testified that when he invited Wright to speak to a group of the firm's clients and friends and offered to pay Wright an

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[61] Procter clarified during his testimony that he did not realize that the 200 hours reflected more than just the time Cossolotto worked on the book in Fort Worth. [Procter Tr. 38.]

honorarium, Marshall Lynam asked whether "in lieu thereof would we have an interest in purchasing the book . . . ." [Pettit Tr. 11.] Marshall Lynam testified that Cathy Mitchell was sometimes responsible for arranging Wright's speaking engagements. [Lynam Tr. 48.] Therefore, Mitchell, like Lynam, participated in marketing the book if she similarly arranged for groups to buy Wright's book.[62]

(1) Analysis and Conclusions

As in all the staff work on the book, because no time records were kept it is impossible to determine whether Lynam and Mitchell devoted less than forty hours a week to or did not fulfill their official staff duties while they were marketing the book. Under these circumstances, there is no apparent violation of any law or standard of conduct.

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[62] Marketing of the book is discussed in full in Section III. C. of the Report.

E. Wright's Use of a Condominium in Fort Worth, Texas

1. Allegations and Investigation

Paragraph 5 of the Committee's June 9, 1988 Resolution authorized a Preliminary Inquiry into Wright's "use of a condominium in Fort Worth, Texas." Very early in the investigation, Special Outside Counsel determined that a thorough examination of Wright's use of the condominium would require an investigation of the relationship between Wright and the controller of the condominium, George Mallick. Accordingly, Mallick was one of the five witnesses subpoenaed to testify and to provide pertinent documents.[63]

We also obtained the testimony of Pamela Smith, the managing director of George Mallick's businesses, who produced additional documentation; Michael Mallick, George Mallick's son, who produced documents relating to Mallightco, Inc. and the Fort Worth Stockyards development project; Richard Swann, an Orlando, Florida attorney, who produced documents relating to the Winderwood real estate development; Richard P. Hoeh, a Certified Public Accountant and former Internal Revenue Agent, who examined Mallightco's books and records and rendered expert opinions concerning the financial transactions of Mallightco and how they were accounted for;[64] Donald E. Hockaday, Jr., who provided an affidavit relating to the Sabine Lake oil investment; and Joe S. Farmer, an oil and gas expert, who also provided an affidavit relating to the Sabine Lake oil investment.

We also obtained documents from Robert Doby, an attorney in the Fort Worth law firm of Simon, Anisman, Doby, Wilson & Skillern, relating to Mallick's participation in the redevelopment of the Fort Worth Stockyards; from Brammer Engineering, Inc. relating to the Sabine Lake oil investments; and from six financial institutions:

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[63] Mallick testified on September 8 and 9, 1988 and produced many of the requested documents. He refused to provide us with documents related to Mallightco, Inc. or any other investment he had with Wright, and moved to quash the portion of the subpoena requesting such documents on the grounds the documents sought were outside the scope of the Preliminary Inquiry. The Chairman found the documents relevant and denied the motion to quash. Mallick subsequently produced additional documents and reappeared on three days to testify concerning matters in those documents and other pertinent matters.

[64] Richard Hoeh has a Master's degree in Business Administration and is a Certified Public Accountant licensed in the State of Illinois. He worked as a special agent in the Criminal Investigation Division of the Internal Revenue Service for three years. He then worked in the I.R.S. Examination Division for six years, becoming a supervisory agent in 1975. Mr. Hoeh has been self-employed for over 13 years assisting attorneys in litigation matters such as antitrust cases, tax cases, and damages matters. [Hoeh Tr. 6-7.]

NCNB Texas (formerly RepublicBank Ridglea) of Fort Worth, Texas; Homestead Savings of Burlingame, California; Interwest Savings and Loan Association of Fort Worth; San Antonio Savings Association of San Antonio, Texas; Federal City National Bank of Washington, D.C.; and Citizens & Southern National Bank (formerly First National Bank, Winter Park) of Winter Park, Florida.

Through analysis of this evidence, we conclude that Mr. Mallick had a direct interest in legislation before the Congress, and made numerous gifts to Wright. Mallick's interests in legislation included his real estate development business, his involvement with the Fort Worth Stockyards project, and his role as an advisor to Wright on the savings and loan crisis in Texas. [*See* Section III. E.3.g of this Report.] The gifts he gave Wright included reduced interest on a loan, procurement of loans, free or reduced-rate housing, cash in the form of a salary for Betty Wright, and the free use of an automobile. [*See* Section III. E.3 of this Report.]

2. Applicable Standards of Conduct

House Rule XLIII, clause 4, provides:

> A Member, officer, or employee of the House of Representatives *shall not accept gifts* (other than personal hospitality of an individual or with a fair market value of $50 or less) in any calendar year aggregating $100 or more in value, directly or indirectly, from any person (other than from a relative of his) *having a direct interest in legislation* before the Congress . . .

[emphasis added.] Federal Law and House Rule XLIV require disclosure of gifts on annual Financial Disclosure Statements.

Advisory Opinion No. 7 issued by the House Select Committee on Ethics defined a "gift" as "[a] payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received by the donor." [Ethics Manual, p. 165.] In relevant part, the Advisory Opinion excluded from the definition of a gift "[l]oans made in a commercially reasonable manner (requirements must exist that the loan be repaid and that a reasonable rate of interest be paid)." [Ethics Manual, p. 167.] This definition of gifts is largely the same as the definition of gifts in the Ethics in Government Act. [2 U.S.C. § 707(3).]

Advisory Opinion No. 9 issued by the Select Committee on Ethics defines an indirect gift for purposes of House Rule XLIII, clause 4. "The word 'indirectly' has principal reference to gifts to the spouse or

dependent of a Member, officer, or employee of the House of Representatives." [Ethics Manual, p. 170.] In addition, the word "indirectly" refers to the source of the gift; that is, a Member may not accept a gift from an agent or a person with a direct interest in legislation before the Congress if the interested person actually paid for the gift. [*Id.*] Advisory Opinion No. 9 cautions Members that gifts received by spouses and dependents are to be treated as indirect gifts to the Member, unless it is clear that the gift is truly independent of the Member. [Ethics Manual, pp. 170-71.] This exception applies only if the gift in question would have been made regardless of the donee's relationship to the Member. [*Id.*]

Advisory Opinion No. 10 issued by the Select Committee on Ethics attempts to define the phrase "direct interest in legislation before the Congress" for purposes of House Rule XLIII, clause 4. While it is clear from the Rule that registered lobbyists have a direct interest in legislation before the Congress, some non-lobbyists also have such an interest. [Advisory Opinion No. 10; Ethics Manual, p. 173.] For instance, any person who employs a lobbyist should also be deemed to have a direct interest in legislation before the Congress. [Ethics Manual, p. 172.] In addition, any organization which maintains a political action committee, and any subordinate or affiliated organization of such an organization should be deemed to have a direct interest in legislation before the Congress as well. [Ethics Manual, p. 173.]

Beyond these clearly identifiable types of organizations, Advisory Opinion No. 10 provides only general guidelines. The Advisory Opinion states that "Members should not accept gifts aggregating over $100 in value from any individual or organization that the Member knows has a distinct or special interest in influencing or affecting the federal legislative process which sets such individual or organization apart from the general public." [*Id.*]

The Select Committee on Ethics also defined "legislation before the Congress" in its Advisory Opinion No. 10. The Select Committee rejected a narrow construction of that phrase as inconsistent with the purpose of the gift restriction. [Ethics Manual, p. 174.] The Advisory Opinion states that legislation may be "before the Congress" even when Congress is not in session or when the "direct interest" lies in having a particular piece of legislation introduced. [*Id.*] In sum, Advisory Opinion No. 10 urges that the phrase "legislation before the Congress" be read "broadly to include an ongoing special interest in affecting the legislative process." [*Id.*]

Another applicable standard is consideration 5 of the Code of Ethics for Government Service which states, in relevant part, that a

Member should "never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties." Thus, even if not within the definition of "gift" or if not given by a person with a direct interest in legislation, a "favor or benefit" is improper if a reasonable person could construe that its receipt influenced a Member's governmental duties.

3. Factual Analysis and Conclusions

a. Background—Wright and George Mallick, 1962-1978

George Mallick is a real estate developer in Fort Worth, Texas. He was born in Fort Worth in 1934. [G. Mallick I Tr. 6.][65] Mallick entered the army in 1953, where he obtained his high school diploma. [G. Mallick I Tr. 6-7.] He was discharged in 1956, and began his career as a real estate developer the following year. [G. Mallick I Tr. 7.] He married Marlene A. Mallick in 1957, and has five children —Christopher, Michael, Angela, Michelle, and Stephen. [G. Mallick I Tr. 7.] Mallick first met Wright in 1962 or 1963, when Mallick was developing a shopping center in Tarrant County, and Wright cut the ribbon opening the development. [G. Mallick I Tr. 8.] From that time until the late 1970's, the relationship between Wright and Mallick remained mostly social.[66]

In 1972, Mallick formed a Texas corporation named Mallick Properties, Inc., to construct apartment complexes in accordance with the "Mallick Concept" of apartment dwellings, *i.e.*, the idea of constructing small, inexpensive apartments for single or just married young adults that in square footage approximated the space in a house trailer. [G. Mallick I Tr. 18, 22; Exhibit E-1, pp. 3-4.] His idea was to build a complex of small apartments with a pool and recreational facilities, located near a city's business district and universities. [G. Mallick I Tr. 22; Exhibit E-1, pp. 4-7.] The stock of Mallick Properties, Inc. was owned by the Mallick Family Trust, the beneficiaries of which are Mallick's five children. [G. Mallick I Tr. 19.]

From 1972 to 1973, Mallick constructed the Hulen Place Apartments, a 104-unit complex located on 4.5 acres of land in western

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[65] George Mallick testified before the Committee on five separate days. For clarity we refer to the transcript of the first two days as "G. Mallick I Tr.", to the transcript of the next two days as "G. Mallick II Tr.", and to the transcript of the final day as "G. Mallick III Tr.".

[66] In addition to his social and occasional business ties with Wright, Mallick also worked on Wright's campaigns. Mallick and his sons have been long-time members of the Wright Congressional Club and Mallick was described as a member of the "inner circle" on Wright's campaign committees. [Youngblood Tr. 29-31; Raupe Tr. 23-24.]

Fort Worth at 4212 Hulen Place. [G. Mallick I Tr. 18; Exhibit E-1, pp. 4-5.] Mallick Properties, Inc. developed the complex, which was formally owned by Marlene A. Mallick. [G. Mallick I Tr. 20, 145; Smith Tr. 9.] Mallick moved his corporate offices into the management office of the Hulen Place Apartments. [G. Mallick I Tr. 120.]

In 1976, Mallick began the Park Ridge development, also implementing the Mallick Concept. [G. Mallick I Tr. 20, 23; Exhibit E-1, p. 5.] The three phases of the Park Ridge development were constructed in 1976 (Phase I), 1977 (Phase II), and 1979 (Phase III) comprising 562 apartments on 35 acres of land in Fort Worth. [G. Mallick I Tr. 20; Exhibit E-1, p. 5.] Both the Hulen Place Apartments and the Park Ridge development proved economically successful. [Exhibit E-1, p. 5.] Both complexes became fully rented and increased in value dramatically. [*Id.*]

As of the end of 1978, in contrast to Mallick, Wright was a man of relatively modest financial means. As Majority Leader, his salary was $68,575. Wright's 1978 Financial Disclosure Statement reveals that he received honoraria totalling $24,750 (of which he could keep no more than $10,286 (*see* House Rule XLVII (1979)) and had unearned income in the range of $7,700 to $22,000. [Exhibit E-2, pp. 3-4.] Wright reported that his total assets were in the range of $72,000 to $170,000. [Exhibit E-2, p. 4.]

b. Activities of Mallightco, 1979-1988

(1) Mallightco's Securities Transactions

Mallick formed the Mallight Investment Corporation in August 1979. [G. Mallick I Tr. 27; Exhibit E-12.] The corporation, which subsequently changed its name to Mallightco, Inc., was owned by George and Marlene Mallick and Jim and Betty Wright equally. [G. Mallick I Tr. 24; Exhibit E-13.] Mallick testified that he, his wife, Jim Wright, and Betty Wright each owned 25 percent of Mallightco's stock [G. Mallick I Tr. 24]; however, Mallightco's corporate records reveal that Marlene Mallick actually owned 50,000 shares of Mallightco's stock [Exhibit E-13, p. 5], while Jim and Betty Wright each owned 25,000 shares of Mallightco's stock. [Exhibit E-13, pp. 3, 4.] George Mallick owned none. [Exhibit E-13.][67] At the first meeting of

[67] Although George Mallick owned no stock in Mallightco, the company often acted as if George and Marlene Mallick each owned part of the company. For instance, a document created by the company states that George and Marlene Mallick both contributed money to capitalize Mallightco. [Exhibit E-14.] In the same vein, the company often treated the Wrights as one 50 percent shareholder, rather than two 25 percent owners. The company's dividend distributions were made to "James C. Wright" without a corresponding distribution to Betty Wright. Mallightco essentially treated the Wrights as one owner, and the Mallicks as the other owner.

the Board of Directors of Mallightco in March 1980, George Mallick was elected President, Betty Wright was elected Vice-President, Marlene Mallick was elected Secretary-Treasurer, and Pamela Smith (then Pamela Trenkle) was elected Assistant Secretary-Treasurer. [Exhibit E-14.] Wright held no office in Mallightco.

The corporation was organized for the purposes of acquiring and developing real estate, buying and selling securities, and making other investments. [Exhibit E-12.] Mallick testified that the purpose of Mallightco was simply to make money for himself and Wright. [G. Mallick I Tr. 27.] Mallick testified that Mallightco would actively seek out potential investments and invest in promising ventures, but only to the extent of the capital that Mallightco had on hand. [G. Mallick I Tr. 31, 66-67.] He also testified that Wright did not want to have the company borrow any money to make investments; according to Mallick, Wright did not even want Mallightco to buy stock on margin. [G. Mallick I Tr. 31.]

Mallightco was funded on February 20, 1980 with a $58,127 cash deposit in its checking account from the Mallicks, and marketable securities from Wright purportedly worth the same amount. [G. Mallick I Tr. 29; Exhibit E-14, E-16, p. 2.] Wright pledged the securities listed in Table E-1, below. Table E-1 also presents the value of the securities contributed by Wright as shown by *The Wall Street Journal* stock tables for February 20, 1980 (the date the Mallicks deposited $58,127 into Mallightco's checking account.) [Exhibit E-17.]

TABLE E-1

Securities Contributed by Wright to Fund Mallightco

Security	# of Shares	Stated Value	Actual Value
Tandy Corp.	150	$ 4,875	$ 4,912
Gulf Oil Corp.	100	4,700	4,675
Western Co. N.A.	666[a]	31,302	30,303
Am. Quasar Corp.	125	4,750	4,484
1st Nat'l Bank of Weatherford	93	11,400	n/a[b]
Misc. Stock		1,100	1,507
		58,127	57,281

NOTE: Stated Value derived from Exhibit E-14
Actual Value derived from Exhibit E-17

[a] Western Company of North America declared a 2 for 1 stock split on August 4, 1980 and another 2 for 1 stock split on May 4, 1981. Exhibit E-14 apparently included the first of these splits. Neither split altered the value of the stock.

[b] First National Bank of Weatherford was not publicly traded in 1980. For purposes of this analysis, we presume the stated value is accurate.

[Exhibits E-14, E-17.]

On February 21, 1980, Mallightco immediately began investing. Mallick invested $50,000 in 30 day Westinghouse Corporation commercial paper paying approximately 14 percent interest. [Smith II Tr. 14; Exhibit E-16, p. 2.] That paper was sold April 23, 1980, earning Mallightco $1,337.08 in interest on the investment. [Exhibit E-16, p. 2.]

On or about March 12, 1980, Mallightco opened a brokerage account with Merrill, Lynch, Pierce, Fenner & Smith to facilitate the company's securities transactions. [Exhibit E-18, p. 1.] Over the next three years, Mallightco made most of its securities transactions through its Merrill Lynch account, as summarized in Table E-2, below. Despite Wright's hesitations about buying stock on margin, Mallightco's very first purchase—Delhi International Oil—was bought wholly on margin. [Exhibit E-18, p. 1.]

TABLE E-2

Mallightco's Securities Transactions, 1980-1983

Date	Transaction	Security	# Shares	Transaction Amount
03/12/80	Deposit[68]	Am. Quasar	125	$
03/12/80	Deposit	Gulf Oil	100	
03/19/80	Buy	Delhi Int'l Oil	1,500	39,150
04/29/80	Buy	Supron Energy Corp.	500	24,346
06/10/80	Sell	Delhi Int'l Oil	(750)	37,761
06/23/80	Split	Supron Energy	250	
12/26/80	Split	Am. Quasar	125	
06/23/81	Split	Supron Energy	750	
08/21/81	Sell	Delhi Int'l Oil	(750)	84,362
08/21/81	Sell	Supron Energy	(1,500)	51,935
10/26/82	Deposit	Western Co. N.A.	2,664	
10/27/82	Sell	Western Co. N.A.	(2,664)	24,998
06/29/83	Deposit	Tandy Corp.	200	
07/05/83	Sell	Tandy Corp.	(200)	10,317
07/05/83	Sell	Am. Quasar	(250)	1,740
07/05/83	Sell	Gulf Oil	(100)	3,584

[Exhibit E-18.]

As Table E-2 shows, Mallightco profited handsomely from its stock investments. It bought 1,500 shares of Delhi Oil at $25.75 [Exhibit E-18, p. 1], sold 750 of those shares at $51.00 [Exhibit E-18, p. 5] and the remaining 750 shares at $113.38. [Exhibit E-18, p. 13.] Mallightco realized a profit of almost $83,000 on Delhi Oil alone. Mallightco also realized substantial profits on Supron Energy Corp.—it bought 500 shares of Supron at $48.00 [Exhibit E-18, p. 3], and sold those shares at $105.56 (price adjusted for stock splits). [Exhibit E-18, p. 13.] Mallightco realized a profit of over $27,500 on Supron Energy. In addition, Mallightco realized significant profits on Tandy Corp. and on First National Bank of Weatherford. Mallightco received Tandy from Wright in 1980, and sold a portion of that stock in July 1983 at a

[68] In deposit transactions, Mallightco deposited previously owned securities into its Merrill Lynch account.

profit of $8,679. [Exhibits E-18, p. 17; E-22, p. 5.] Mallightco sold its 93 shares of First National Bank of Weatherford stock on July 29, 1983 for $25,048.62, realizing a profit of $13,651. [Exhibits E-14; E-22, p. 5; E-26, p. 2.]

Mallightco's other securities investments performed less well. Mallightco lost $6,314 on the sale of Western Company of North America [Exhibit E-21, p. 5], lost $1,115 on Gulf Oil [Exhibit E-22, p. 5], and lost $2,993 on American Quasar. [*Id.*][69]

Mallightco made no securities transactions from July 1983 to January 1987, when it began trading securities through Minton Schmid, a Fort Worth stock broker. [Exhibit E-27.] Table E-3, below, summarizes Mallightco's securities transactions with Minton Schmid, and shows that Mallightco lost almost $700 on the securities it sold in 1987.

TABLE E-3

Mallightco's Securities Transactions With Minton Schmid

Date Bought	Security	Price	Date Sold	Price	Profit (Loss)
1/08/87	Electro Catheter	$4,909	5/19/87	$6,789	$1,880
3/10/87	American Pioneer Savings Bank	9,109	7/27/87	6,542	(2,567)
5/27/87	Final Test, Inc.	2,101	not sold		

[Exhibit E-27.]

On the whole, Mallightco was extremely successful in its securities investments. Although a few of its holdings diminished in value, the two energy companies in which Mallightco invested performed spectacularly. Mallightco realized profits of over $110,000 on those transactions.

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[69] By mid-1983, Mallightco had sold all the securities Wright had initially contributed, with the exception of 100 shares of Tandy Corp. and a few miscellaneous shares.

(2) Loans to and from Shareholders

In August 1980, Mallightco began lending money to its shareholders from the Mallicks' initial cash contribution. On August 15, 1980, Mallightco loaned Wright and Marlene Mallick $4,375 each. [Exhibit E-16, p. 2.] Pamela Smith explained that Mallick and Wright borrowed the money in order to make an oil investment. [Smith II Tr. 18.] She further testified that each borrower signed a promissory note for the appropriate amount. [*See* Exhibits E-28, E-29.] A ledger sheet was attached to each note, ten percent interest was charged and duly accrued, and records were kept reflecting payments made by the borrower. [Smith II Tr. 18-19; Exhibits E-28, E-29.] On or about September 3, 1980, Jim Wright and Marlene Mallick each borrowed $5,536.09 from Mallightco on the same basis. [Exhibits E-30, E-31.]

On or about September 12, 1980, Marlene Mallick obtained a $150,000 loan from the Ridglea Bank, at 13.5 percent interest. [Exhibit E-36A, p. 1.] She then loaned $150,000 to Mallightco at the same rate. [Exhibit E-16, p. 2; Smith II Tr. 19-20.] Marlene Mallick and Betty Wright each then borrowed $75,000 from Mallightco, again at 13.5 percent interest. [Exhibits E-16, p. 2; E-32; E-33.][70] The effect of the transaction was to increase Mallightco's assets by $150,000 (in the form of notes receivable from Marlene Mallick and Betty Wright) while increasing its liabilities (in the form of a note payable to Marlene Mallick) by the same amount. [Hoeh Tr. 19.] George Mallick could not remember why this transaction was structured the way it was. [Smith II Tr. 22-23.][71] He denied that the loan money was passed through Mallightco to increase the company's assets and show that it was actively borrowing and lending money. [Smith II Tr. 23.]

The Wrights and Marlene Mallick used the money they borrowed to invest in oil and gas drilling programs organized by Southeastern Resources Corporation ("SERC"). [Smith II Tr. 19-20.] With one exception, these loans were repaid only from the revenues from the oil and gas investments. [Hoeh Tr. 26-27.] For example, the first revenue came into Mallightco from SERC on December 15, 1980, in the amount of $540.31. [Exhibit E-16, p. 3.] Of that sum, $533.48 was

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[70] According to Mallightco's check register [Exhibit E-16, p. 2], Mallightco received "loan proceeds" in the amount of $150,000 on September 12, 1980. Mallightco then made loans of $75,000 to Marlene Mallick and Betty Wright the same day. [*Id.*] However, the promissory note to Ridglea Bank from Mrs. Mallick for $150,000 is dated October 10, 1980. [Exhibit E-36A.]

[71] George Mallick was present during Pamela Smith's second day of testimony, and occasionally was asked questions she could not answer. Thus, Mallick's testimony partially appears in Smith's transcript.

identified as revenue from Marlene Mallick's investments; Mallightco allocated that payment to her August 15, 1980 note by first paying the entire amount of outstanding interest ($164.06), and then using the remaining amount ($369.42) to reduce the principal balance. [Exhibit E-29, p. 2.] At the same time, Mallightco received $6.83 from Jim Wright's investments, and allocated the entire amount to outstanding interest on his August 15, 1980 note. [Exhibit E-28, p. 2.] Other than oil and gas revenues, Mallightco received only one payment on account of the loans to its shareholders.

In late December 1980, Mallightco acquired a used 1979 Cadillac Seville from Marlene Mallick for $10,575. [Hoeh Tr. 27.] Mallightco did not pay cash for the automobile; rather, it credited the value of the Cadillac against Marlene Mallick's loans. Mallightco credited $4,005.58 against her first loan (thus paying it in full) [Exhibit E-29, p. 2]; credited $5,720.63 against her second loan (thus paying it in full) [Exhibit E-31, p. 2]; and credited the remaining $848.79 against interest outstanding on her $75,000 loan. [Exhibit E-33, p. 2.]

At the end of 1980, the Wrights owed Mallightco a total of $84,911. [Exhibit E-44.] At the same time, Mallightco owed the Mallicks a net $75,000. (The Mallicks owed Mallightco $75,000 and Mallightco owed the Mallicks $150,000; thus Mallightco owed the Mallicks $75,000.) In short, through the end of its first year of operation, the Mallicks and the Wrights had each removed roughly $85,000 from Mallightco in the form of loans; yet the Wrights had contributed merely $58,000 in securities, while the Mallicks had contributed $208,000 in cash plus a $10,575 Cadillac.

As noted above in Table E-2, Mallightco realized over $130,000 in revenue from the sale of Delhi and Supron stocks in August 1981. Mallightco deposited those proceeds in its checking account and used that money to (1) loan Wright $2,750 and $34,567.42 [Exhibits E-16, pp. 5-6; E-34; E-35]; and (2) pay back over $91,500 of the $150,000 loan from Marlene Mallick. [Exhibits E-16, p. 6; E-45, p. 1.] These loans to Wright were on the same terms as the earlier loans. [Exhibits E-34, E-35.]

Wright borrowed the money so he and his wife could make their initial investment in the BMW Drilling Fund. [*See* Section III.E.3.f of this Report.] These loans boosted Wright's total borrowings from Mallightco to more than $47,000 ($34,567 plus $4,375 plus $5,536 plus $2,750). When combined with Betty Wright's borrowing of $75,000, by the end of 1981, the Wrights owed Mallightco nearly $120,000. [Exhibit E-44.] At the same time, the Mallicks owed Mallightco only $10,500 (the Mallicks owed Mallightco $68,922, while Mallightco owed the Mallicks $58,480). [*Id.*]

Over the next several years, Mallightco received fairly regular payments from SERC on behalf of the Wrights. Table E-4 summarizes the payments made by the Wrights during the years 1980 to 1987.

TABLE E-4

Summary of Notes and Interest Payments to Mallightco From the Wrights

Year	Total Payment	Interest Paid	Principal Paid	Year End Balances Principal	Interest
1980	$ 6	$ 6	$ 0	$ 84,911	$ 0[72]
1981	15,451	11,908	3,543	118,685	0
1982	33,055	11,361	21,694	96,990	836
1983	27,260	11,330	15,930	81,061	1,198
1984	8,884	8,390	494	80,567	2,592
1985	12,506	9,521	2,985	77,581	2,738
1986	4,424	4,424	0	77,581	6,494
1987	1,573	1,573	0	77,581	12,678

[Exhibits E-44; E-46; E-47.]

As Table E-4 demonstrates, starting in 1984, the Wrights made little progress in reducing the outstanding principal balance they owed to Mallightco. In fact, they were no longer meeting their interest payments. However, the company never demanded payment from the Wrights or took any steps to collect the debt. The principal was not paid off until 1988, when the Wrights sold their shares of Mallightco stock back to the company. [*See* Section III.E.3.b(5) of this Report.]

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[72] The individual ledger sheets Mallightco kept on the Wrights' loans indicate that interest was indeed accrued at all times. [*See* Exhibits E-28, E-30, E-32, E-34, E-35.] However, it is not clear why Mallightco appears to accrue interest at approximately 10 percent while Betty Wright's $75,000 loan bore 13.5 percent interest. [*See* Exhibit E-32.]

Throughout the entire term of Betty Wright's $75,000 loan from Mallightco, the interest rate stayed at 13.5 percent. By contrast, Ridglea Bank adjusted the interest rate on Marlene Mallick's $150,000 loan every 60 or 90 days to take into account the fluctuations in the prime interest rate. For instance, on April 10, 1981, Ridglea Bank renewed Marlene Mallick's $150,000 loan for 90 days at 17 percent interest. [Exhibit E-132.]

Over the next several years, Ridglea Bank renewed Marlene Mallick's loan almost twenty times, and adjusted the interest rate either upwards or downwards almost every time. The fluctuations in the interest rates, the principal amounts of Betty Wright's loans, and a comparison between the interest rates actually paid by Betty Wright versus what she should have paid at market rates, is shown in Table E-4A, below:

TABLE E-4A

COMPARISON BETWEEN INTEREST RATES PAID BY MARLENE A. MALLICK AND THOSE PAID BY BETTY H. WRIGHT

Date	Amount MAM loan (000)	Market Int. Rate (%)	Term (days)	Amount BHW loan (000)	Int. Rate (%)	Int. Paid at 13.5%	Int. at market rate
09/12/80	$150	13.5	30	$75.0	13.5	$ 832	$ 832
10/10/80	$150	13.5	182	$75.0	13.5	$5,048	$5,048
04/10/81	$150	17.0	90	$75.0	13.5	$2,497	$3,144
07/09/81	$150	20.5	69	$75.0	13.5	$1,914	$2,906
09/16/81	$100	20.0	90	$75.0	13.5	$2,497	$3,698
12/14/81	$100	16.75	90	$75.0	13.5	$2,497	$3,097
03/15/82	$100	17.5	90	$72.3	13.5	$2,407	$3,120
06/14/82	$100	17.5	90	$68.7	13.5	$2,287	$2,964
09/13/82	$100	14.5	90	$68.0	13.5	$2,263	$2,431
12/14/82	$100	13.5	90	$65.1	13.5	$2,167	$2,167
03/15/83	$100	12.5	60	$59.8 (est.)	13.5	$1,327	$1,229
05/14/83	$ 98	12.5	60	$57.5 (est.)	13.5	$1,276	$1,181
07/13/83	$ 97	12.5	90	$54.7 (est.)	13.5	$1,821	$1,686
10/11/83	$ 97	13.0	60	$52.8 (est.)	13.5	$1,172	$1,128
12/12/83	$ 97	14.0	90	$49.7	13.5	$1,654	$1,716
03/12/84	$ 96	14.0	90	$49.2	13.5	$1,638	$1,698
06/11/84	$ 95	14.5	90	$49.2	13.5	$1,638	$1,759
09/10/84	$ 94	15.0	90	$49.2	13.5	$1,638	$1,820
12/10/84	$ 25	13.25	90	$49.2	13.5	$1,638	$1,607
03/11/85	$ 24	12.5	90	$48.7	13.5	$1,621	$1,501

As Table E-4A shows, despite the fluctuations in the prime interest rate, Mallightco's loan to Betty Wright remained constant at 13.5 percent.

(3) Tax Levies Assessed on Mallightco

As with any corporation, Mallightco was required to annually pay taxes on its profits. However, Mallightco repeatedly failed to pay its corporate tax assessments on time, forcing the Internal Revenue Service to impose tax levies on the company's bank account.

The Internal Revenue Service levies a taxpayer's assets only after making numerous attempts to collect the amount due with the taxpayer's cooperation. [Hoeh Tr. 47-48.] First, the IRS will send out a bill to a delinquent taxpayer; if the billing is ignored, the IRS will follow with several letters informing the taxpayer it owes money. [*Id.*] Normally, the IRS sends out four notices before the matter is sent to the Collection Department for levy. [Hoeh Tr. 48.] The IRS will only exact a tax levy on a taxpayer who fails to pay his taxes after all of these notices. [*Id.*]

For the 1980 tax year, Mallightco reported taxable income of $12,988.69. [Exhibit E-19, p. 1.] Mallightco reported owing income tax in the amount of $1,855.58. [*Id.*] The company did not pay the taxes until August 26, 1981. [Exhibit E-16, p. 6.] Because of this late payment, the IRS charged Mallightco interest in the amount of $103.10 and assessed a penalty in the amount of $580.30. [*Id.*] Mallightco paid the penalty and interest on October 20, 1981. [*Id.*]

For the 1981 tax year, Mallightco reported earning taxable income of $63,515.23, for which it owed $13,304.57 in income taxes. [Exhibit E-20, p. 1.] Mallightco paid the IRS $3,000 on May 12, 1982, and paid $2,151.98 more at the end of July, 1982. [Exhibit E-16, p. 9.] Mallightco still owed the IRS over eight thousand dollars on its 1981 income taxes; on November 8, 1982, the IRS imposed a tax levy in the amount of $10,929.18 (including penalty and interest [*see* Hoeh Tr. 4]) on Mallightco's checking account at the RepublicBank Ridglea. [Exhibit E-16, p. 10.]

For the 1982 tax year, Mallightco reported a loss of $10,400, and accordingly, owed no income taxes. [Exhibit E-21, p. 1.]

For the 1983 tax year, Mallightco reported taxable income of $10,124, for which it owed $1,519 in income taxes. [Exhibit E-22, p. 1.] Mallightco had previously paid $680 to the IRS, so it reported owing the IRS $935 (including $96 underpayment penalty). [*Id.*] Mallightco again did not pay this amount promptly, and the IRS imposed a tax levy in the amount of $1,360.54 on Mallightco's bank account on January 16, 1985. [Hoeh Tr. 46; Exhibit E-16, p. 16.]

For the 1984 tax year, Mallightco reported a loss of $13,144, and accordingly, owed no income taxes. [Exhibit E-23, p. 1.]

For the 1985 tax year, Mallightco reported taxable income of $7,563, for which it owed $4,356 in income taxes (including the personal holding company tax). [Exhibit E-24, p. 1.] Mallightco again failed to pay the taxes when due, and the IRS imposed another tax lien against the company's bank account, this one on August 8, 1986, in the amount of $4,676.68. [Exhibit E-16, p. 19.]

For the 1986 tax year, Mallightco reported taxable income of $4,582, for which it owed $687 in income taxes. [Exhibit E-25, p. 1.] Mallightco filed its return late (in September 1987), and paid $67 in penalty and interest as a result. [*Id.*; Exhibit E-16, p. 23.] Mallightco did tender payment along with its tax return for the 1986 tax year, however. [Exhibit E-16, p. 23.]

As of the end of 1988, Mallightco had not yet filed its 1987 tax return.

Mallightco's continual troubles with the IRS show that Mallick did not operate the company as a normal business. No businessman interested in making a profit would allow his company to be repeatedly assessed penalties and interest for nonpayment of taxes. Rather, the company was designed and used to give cash to the Wrights, and not as a legitimate business venture for both families. Mallick simply did not treat Mallightco as a serious business, but wilfully neglected to follow the requirements of the law.

(4) Mallightco's Other Investments

Besides its securities investments, Mallightco made two other investments during the period 1981-1987: a $40,000 investment in the American Overseas Trading Corporation—Gemstone Division, Joint Venture #1 (the gemstone investment); and a $39,000 investment in the Winderwood development project (the Florida land investment).

(a) Gemstones

On July 14, 1983, Mallightco invested $40,000 in a limited partnership organized by American Overseas Trading Corporation—Gemstone Division ("AOT"), a company owned and controlled by George Mallick's son, J. Christopher Mallick. [G. Mallick I Tr. 40-41, 96.] AOT was a corporation based in New York involved in the import-export business. AOT obtained funds from investors to purchase uncut or rough cut gemstones (sapphires, aquamarines, amethysts, topazes, and the like) overseas, and to finish the stones in the United States. AOT then sought to sell the stones at a profit to jewelers or wholesalers. [G. Mallick I Tr. 38-44.] Mallightco invested $40,000 in AOT Limited Partnership #1, which acquired gemstones from Brazil in August 1983.[73] [Exhibits E-48, E-49.]

George Mallick testified that he personally had bought several lots of gemstones and saw it as a good investment for Mallightco. [G. Mallick I Tr. 40.] Mallick told Wright that Mallightco was going

[73] Brazilian gemstones may be imported into this country duty-free.

to make the investment, and Wright relied on Mallick's advice. [G. Mallick I Tr. 40.] Since Mallightco was simply an investor in a limited partnership, it had no control over and played no role in the acquisition, processing, or marketing of the gemstones. [G. Mallick I Tr. 41.] Mallightco had no control over when or to whom any gemstones were sold. [G. Mallick I Tr. 43.] Mallightco made no further investments in gemstones with AOT or any other entity.

On July 28, 1986, Mallightco received its first of three distributions from AOT on the sale of some of the gemstones. [Exhibit E-16, p. 19.] On its 1986 tax return, Mallightco improperly treated this first distribution of $31,950 as the entire proceeds from its investment, and realized a $5,435 long-term capital loss ($31,950 revenue less $37,385 cost). [Exhibit E-25, p. 5.][74] Mallightco used the proceeds from AOT to pay $16,000 cash to Wright. [Exhibit E-50, p. 1.] Mallightco initially treated this $16,000 payment as a loan to Wright, but later recharacterized it as a dividend. [Hoeh Tr. 64.]

When Mallightco decided to treat the $16,000 payment as a dividend, the company did not issue a similar $16,000 cash payment to the other stockholders. Rather, Mallightco reduced the balance owing from the Mallicks by $16,000. [Exhibit E-51.] George Mallick testified he opted to receive his dividend in the form of reducing his outstanding indebtedness. [G. Mallick II Tr. 56.] He also testified that he made the decision to allow Mallightco to issue its dividend in this fashion. [G. Mallick II Tr. 66-67.]

At the time Mallightco decided to treat this payment as a dividend to its stockholders (roughly early 1987), the Mallicks owed Mallightco net $47,839 (the Mallicks owed Mallightco $154,908 principal and interest, and Mallightco owed the Mallicks $107,068 principal and interest), while the Wrights owed Mallightco nearly twice as much—$84,075 in principal and interest. [Exhibits E-51, E-52.] Yet Mallick testified that he believed that the dividend policy he implemented was not inequitable. [G. Mallick II Tr. 69, 72-73.]

Mallightco received two additional distributions from AOT. On March 3, 1987, Mallightco received $25,000; on March 20, 1987, Mallightco received $6,000. [Exhibit E-50, p. 1.] After Mallightco received the March 3, 1987 distribution from AOT, it declared a stockholder dividend in the amount of $13,000. [*Id.*] Again, Wright received his dividend in the form of cash, while the Mallicks' dividend was applied against their outstanding debt. [Hoeh Tr. 71.]

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[74] At the end of 1986, Mallick reported that Mallightco held $198,000 worth of gemstones. [Exhibit E-43, p. 8.]

Altogether, Mallightco has received distributions totalling $62,950 from AOT on its $40,000 investment, with the expectation of perhaps $30,000-$40,000 more to come. [G. Mallick I Tr. 56.]

(b) Florida Land

In September 1986, Mallightco invested in a Florida real estate venture formed by Richard R. Swann,[75] Edward E. Haddock, Jr. and Carl R. Julian. Swann first met Mallick in 1984 or 1985 at a Democratic fundraising banquet. [Swann Tr. 13; G. Mallick III Tr. 6-7.] The two men met occasionally over the next few years at various social events and political fundraisers, but were not close friends. [Swann Tr. 14.]

In January 1986, Swann joined with Haddock and Julian to develop a 20-acre parcel of land in Orange County, Florida, which became known as "Winderwood." [Exhibit E-125.] The co-venturers established a land trust, with Swann as the trustee, to purchase, hold title to, subdivide and develop the parcel of land and to sell lots to home builders. [*Id.*] Swann and Haddock each owned 25 percent of the beneficial interest of the land trust, and Julian owned 50 percent. [*Id.*] Julian ultimately paid $117,280 for his 50 percent interest. Swann and Haddock each paid half that amount for their 25-percent interests. [Exhibit E-130.]

On January 3, 1986, Swann, as trustee, obtained two loans totalling $1.2 million from the First National Bank, Winter Park (which became the Citizens and Southern National Bank in December 1986) to finance the acquisition of the land for the Winderwood development. [Exhibit E-126.] By June 1986, the Winderwood developers had obtained all the necessary permits and authorizations from the Orange County Zoning Director, Engineer, Comptroller and Board of Commissioners and South Florida Water Management District to begin construction. [Exhibit E-127.]

Sometime between May and August, 1986, Swann and Mallick encountered each other at a Democratic fundraiser. Their conversa-

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[75] Richard R. Swann is a real estate attorney and developer in Orlando, Florida, where he founded the law firm of Swann and Haddock. He is also a major shareholder and officer of American Pioneer Savings Bank, a large Orlando-based savings and loan association. Swann is a member of the U.S. League of Savings Institutions. He sits on the League's Holding Company Committee, which is responsible for national legislation dealing with savings and loan holding companies.

Swann is well known in Florida as a major Democratic fund-raiser. In 1977, President Carter appointed Swann to the Overseas Private Investment Corporation which provides political risk insurance, direct loans, and loan guarantees to qualified U.S. private investors to support their investments in lesser-developed countries.

tion turned to the real estate development business, and to the possibility of their investing together in a real estate venture. [Swann Tr. 23-24.] Mallick expressed his desire to invest in Florida. According to Swann, he thereafter decided to invite Mallick to participate in the Winderwood development. [Swann Tr. 28.]

Swann testified that he had heard that Mallick was a successful Fort Worth real estate developer. He saw Mallick as a potential source of capital for his future development projects. [Swann Tr. 25.] Swann saw the Winderwood project as a small deal which, if successful, could lead to larger investments with Mallick in the future. [*Id.* at 25-26.] In addition, Swann testified he and Haddock were temporarily low on funds, so Mallick's contribution would ease their cash-flow problems and return part of their initial investment. [*Id.* at 26.]

Swann testified he was on a business trip in California when he decided to stop in Fort Worth on the way back to Florida and offer Mallick the opportunity to buy a one-sixth interest in Winderwood. [Swann Tr. 28.][76] Mallick studied the documents provided by Swann, decided it was a good venture, and later agreed to participate in Winderwood. At the time, however, Mallick had not decided into which of his various business entities he would place the investment. [G. Mallick III Tr. 11-12.] At the time Swann believed he was dealing with George Mallick, individually.

Mallick decided he would invest in the Winderwood through Mallightco. He testified he did so because Mallightco did not have a real estate investment, although it had been looking for one, and the price was affordable. [G. Mallick III Tr. 12-14.] Mallick called Betty Wright to inform her of the opportunity. Mallick testified she told him to rely on his business judgment to make a decision. [G. Mallick III Tr. 45-47.] Mallick agreed to place Mallightco in the deal.

Mallick then decided he would borrow the money for the investment rather than expend Mallightco's assets. Mallick was led to Federal City National Bank of Washington, D.C. by Terry McAuliffe.[77] McAuliffe was one of the founders of Federal City National Bank.[78] The Bank approved the loan for $33,333 and on

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[76] Swann testified that he visited Mallick in Fort Worth on September 11 or 12, 1986. [Swann Tr. 30.] However, Mallick applied for the loan to finance his purchase in *August*, 1986, and paid for his interest on September 12, 1986.

[77] McAuliffe is Swann's son-in-law. Swann testified he did not learn of Mallick's loan from Federal City until early 1989.

[78] At the time, the Chairman of Federal City National Bank was Charles Emmet Lucey, a partner in the Washington, D.C., law firm of Manatt, Phelps, Rothenberg, and Evans. Another partner in the Manatt firm, William C. Oldaker, represented Wright, Mallick and several other witnesses throughout the Committee's Preliminary Inquiry proceedings.

August 21, 1986, disbursed the money to Mallightco. [Exhibits E-53; E-16, p. 19.]

On September 11, 1986, Peter G. Latham, one of Swann's law partners, sent Mallick various documents relating to his investment in the Winderwood development. [Exhibit E-128.] These documents named Mallick as the buyer of the one-sixth interest. [Swann Tr. 49.] The next day, Mallightco issued a check for $39,093.31 to "Swann & Haddock Escrow" to pay its one-sixth interest.[79] [Exhibit E-16, p. 19.] When Latham saw that Mallightco was the payor rather than Mallick, he called Mallick to investigate. [Swann Tr. 29.] Mallick explained that Mallightco would be the investor. He later assured Swann that Mallightco could satisfy any obligations which might arise. [*Id.* at 29, 51.]

Latham revised the assignment and indemnification agreements to identify Mallightco as the purchaser. On October 1, 1986, Mallightco executed Assignments of Beneficial Interest agreements in which it purchased one third of the 25 percent beneficial interests owned by both Swann and Haddock and a Cross-Indemnification agreement in which Mallightco agreed to indemnify Swann and Haddock on account of their guaranties for the outstanding mortgages on the Winderwood development.[80] [Exhibit E-129.]

Neither Swann nor Mallick could remember precisely when Swann first learned of Wright's interest in Mallightco. Both men testified that Swann may have first acquired the knowledge in late 1986 or early 1987 when Michael Mallick travelled to Orlando to visit the site. [Swann Tr. 64-65; G. Mallick III Tr. 47.][81] Swann testified he "wasn't unhappy about [Wright's involvement]. I was kind of proud to be a partner of the Speaker." [Swann Tr. 59.]

As noted above, Swann has been a Democratic fundraiser since the 1970's. As such, he occasionally encountered Wright at fundraising events. Swann first met Wright in July 1985 when he hosted a barbeque for the Democratic Congressional Campaign Committee at his Florida home. [Swann Tr. 15.] Wright was a featured celebrity at the event. [*Id.*]

Because Wright was scheduled to appear on a network news show early the next morning, the event's organizers asked Swann if

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[79] This sum is precisely one-third of the $117,279.92 paid by Swann and Haddock for their total 50 percent interest in the Winderwood development.

[80] Swann testified that he did not normally require his business partners to sign cross-indemnification agreements. [Swann Tr. 44.] However, because he had never dealt with Mallick before, he required such a document in this case. [*Id.*]

[81] Mallightco's records do not reflect any payments relating to Michael Mallick's trip to Florida in late 1986 or early 1987.

Wright could spend the night at his house. [Swann Tr. 15-16.] Swann's house was near the network's local affiliate. [*Id.* at 19.] Swann testified he was alone with Wright for only a few minutes during his entire stay. [*Id.*] According to Swann, during Wright's stay in Orlando, their conversations concerned only general political issues. [*Id.* at 18.] No discussion of issues relevant to the savings and loan industry occurred. [*Id.* at 18, 95-96, 101.] There is no evidence that Swann ever lobbied Wright or benefitted in any way from his partnership with Wright.

There is also no evidence that Swann's role in the U.S. League of Savings Institutions affected the Winderwood development or his decision to let Mallick invest in it. Although American Pioneer Savings Bank was a member of the League, Swann was not an active member. Swann testified that he has attended only one League meeting, its annual convention. [Swann Tr. 84.]

Similarly, although Swann was also a member of the League's Holding Company committee, he attended only one committee meeting. [Swann Tr. 85.] Swann testified he felt like an outsider at the Committee's meeting and that his views were "diametrically opposed" to those of most of the members. [*Id.*]

We do not know when Wright learned of the Winderwood development or when he learned that Swann was one of the leading developers of the project.

Beginning in 1986, lots in Winderwood were sold and the mortgage from First National Bank, Winter Park, was paid off. In September 1987, Mallightco received its first distribution from the Winderwood development in the amount of $23,000. [Exhibits E-54; E-131, pp. 1-2.] At the time, Swann indicated that enough lots had been sold to pay off the mortgage to Citizens & Southern at the end of August 1987 [Exhibit E-130], and that the expected profit was in the neighborhood of $100,000 per investor. [Exhibit E-131, p. 1.] Mallightco subsequently received distributions from the Winderwood development in the amount of $30,000 on October 27, 1987 [*Id.*, pp. 3-4]; $16,234.13 on January 8, 1988 [*Id.*, pp. 5-6]; $15,000 on March 11, 1988 [*Id.*, p. 7]; and $12,500 on or about July 13, 1988.[82] [*Id.*, p. 8.] Thus, through July 1988, Mallightco received total distributions in the amount of $96,734.13 on its initial $39,093 investment.

As of July 1988, three lots remained unsold. Swann estimated to Michael Mallick that each would be sold for $45,000. [*Id.*] Accordingly, Swann estimated there would be $135,000 left to be dis-

[82] The July 1988 distribution was received by Mallightco after it had repurchased all of the Wrights' stock.

tributed, of which one-sixth, or $22,500, would go to Mallightco. [*Id.*] By the end of 1988, all lots had been sold.

Mallightco used these distributions from Winderwood to repay its loan from Federal City National Bank and to make cash dividend distributions to the Wrights. In September 1987, Mallightco used $20,000 of the $23,000 Winderwood distribution to partially repay Federal City National Bank on its loan. In October 1987, Mallightco used almost $14,000 of the $30,000 Winderwood distribution to repay the outstanding loan balance. [Exhibit E-54.] Mallightco also paid a $15,000 cash dividend to the James C. Wright, Jr. Blind Trust which recently had been formed.[83] [Hoeh Tr. 7; Exhibit E-54.] In January 1988, Mallightco used $15,000 of the $16,234 Winderwood distribution to pay Wright's Blind Trust a cash dividend. The Mallicks received their dividend in the form of a reduction in debt. [Hoeh Tr. 71; Exhibit E-54.] There is no indication that Mallightco paid any dividends out of the Winderwood distributions in March or July 1988.

Thus, through June 1988 (when Wright sold his Mallightco stock back to the company) (*see* Section III.E.3.b(5) of this Report), Mallightco had invested $39,093.31 in the Winderwood development, paid $3,958.50 in interest to Federal City National Bank, and received $84,234.13 in proceeds, for a profit of $41,182.32. [Exhibit E-54.] In total, Mallightco earned a 95 percent return on its investment in under two years. Of that profit, $30,000 has been paid in cash to Wright's Blind Trust and none has been paid to the Mallicks.

Altogether, Mallightco's dividend policy resulted in the Wrights' receiving significantly more cash than did the Mallicks from 1980 through 1987. During that period, Mallightco distributed to the Wrights a net amount of $36,192, while it received from the Mallicks a net amount of $37,365. [Exhibit E-55.][84]

(5) Mallightco's Activities, 1987-1988 and Wright's Sale of His Mallightco Stock

In March 1987, Michael J. Mallick was elected President of Mallightco, Inc. [M. Mallick Tr. 43.] George Mallick testified that Michael wanted to become President of Mallightco to see if he could stimulate some business for the company. [G. Mallick II Tr. 44.] Michael asked his parents and the Wrights if he could become President of Mal-

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[83] As with the dividends declared as a result of distributions from the Gemstones investment, Marlene Mallick received her dividend distribution in the form of reducing her outstanding debt to Mallightco.

[84] Although it appears Mallightco benefitted the Wrights more than the Mallicks, at the end of 1987, the Wrights still owed Mallightco over $90,000. If the Wrights had paid this debt then, the discrepancy between the distribution to the Mallicks and to the Wrights would have vanished.

lightco to see what he could do with the company. [G. Mallick II Tr. 44.] The shareholders of Mallightco agreed, and elected him Mallightco's President in March 1987; however, the shareholders limited his spending authority to $25,000. [G. Mallick II Tr. 44.] Since that time, Michael Mallick has operated Mallightco without supervision or review, except for two transactions valued in excess of $25,000. [G. Mallick II Tr. 44-45.]

In October 1987, Wright placed most of his assets in a qualified blind trust. [Exhibit E-10, pp. 7-8.] Wright's 1986 Financial Disclosure Statement, as amended, reveals that he placed into the trust all of his and his wife's ownership interest in Mallightco,[85] the BMW Drilling Fund, and a myriad of other assets. [Exhibit E-10, pp. 7-8.] At roughly the same time, the Mallicks sold their Mallightco stock to their daughter Angela. [G. Mallick II Tr. 29; G. Mallick III Tr. 84.] Mallick testified that he owed Angela $100,000, and he traded his stock to her in exchange for that debt. [G. Mallick II Tr. 29-30.]

On its 1986 tax return, Mallightco reported $313,000 in total assets and total liabilities of $144,200 as of the end of 1986. [Exhibit E-25, p. 4.] Mallightco's stockholders' equity was $168,800; the Wrights' 50 percent ownership represented $84,400 in equity. [*Id.*] However, as of the end of 1986, Betty Wright owed Mallightco $48,700 on the outstanding promissory note plus nearly $3,000 in unpaid interest; Jim Wright owed Mallightco $28,884 on his promissory notes, plus $3,500 in unpaid interest. [Exhibit E-44.] Therefore, while the Wrights owned equity in Mallightco of $84,400, they owed the company $84,025.

Mallick testified that when Wright created his blind trust, he instructed the trustee[86] to liquidate his interest in Mallightco; however, he wanted the sale to occur in a prudent manner that would maximize his profit. [G. Mallick II Tr. 28.] From Mallightco's perspective, George Mallick testified that he wanted to handle the sale of Wright's Mallightco stock his own way. [G. Mallick II Tr. 29.]

Thus, before Mallightco would buy back the Wrights' stock, Mallick testified he wanted "to bet the farm" on one deal. [G. Mallick II Tr. 29.] Mallick said he shopped for an appropriate investment until he

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[85] At the time, Wright valued his 50 percent interest in Mallightco at $163,632.50. [Exhibit E-10, pp. 7-8.] Mallightco's major assets were the Winderwood investment ($104,000), the Gemstone investment ($93,000) and the receivable from the stockholders ($123,000 net). [*Id.*] Once Wright created his blind trust, all distributions from Mallightco went into the trust and all subsequent transactions involving Wright's interest in Mallightco occurred under the auspices of the blind trust.

[86] The trustee of Wright's blind trust was Thomas A. Law, a Fort Worth attorney. The trustee's daughter, Deborah Law, worked as a staffer in Wright's Fort Worth office.

found an oil deal with Jaffee Energy Corp.[87] known as the North Sabine Lake prospect. [G. Mallick II Tr. 31-32; Exhibit E-56, p. 1.] George Mallick told Michael Mallick to deal with Doug Jaffe and to handle the transaction. [G. Mallick III Tr. 86.] In January 1988, Michael Mallick, on behalf of Mallightco, executed a letter of intent to purchase an undivided four percent working interest in the Sabine Lake prospect. [Exhibit E-56, pp. 2-3.] He agreed to pay $9,120 for the cost of drilling an initial test well, and four percent of all subsequent drilling and completion costs. [*Id.*] George Mallick testified that the documents were in Michael Mallick's name rather than Mallightco's name to keep Mallightco out of the newspapers and the public eye. [G. Mallick III Tr. 89.] Michael Mallick expected his share of the drilling costs to be $60,000 and his share of the estimated completion costs to be $30,000. [M. Mallick Tr. 49.] While the original letter of intent documents are dated January 12, 1988, in fact, Mallightco did not actually acquire its four percent interest in the Sabine Lake Prospect until May 10, 1988. [Exhibit E-121.] On that date, Michael Mallick filed a Partial Assignment with the public records department in Orange County, Texas, which assignment was not recorded until June 2, 1988.[88]

Drilling on the Sabine Lake well began March 4, 1988. [Exhibit E-122, p. 1.][89] The well reached total depth of 11,560 feet on April 2, 1988 at a cost of $1,256,151. [*Id.* at p. 7.] The well operator, Brammer Engineering Co., ran an electric log on that date to determine the potential productivity of the well. [*Id.*] The log revealed the probable presence of oil and gas in a seven foot band of Hackberry sand at a depth of 11,272-11,280 feet. [Exhibit E-123; Farmer Aff., ¶ 9.] Based upon these log indications, the owners of the well (primarily Jaffe Energy, Inc. and Goodrich Oil Co.) decided to commence completion operations.

From April 3, 1988 to April 22, 1988, Brammer Engineering worked to install the necessary equipment on the well to begin

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[87] Jaffe Energy Corp. is owned by M. D. Jaffe, Sr. ("Morris") and/or M. D. Jaffe, Jr. ("Doug") of San Antonio, Texas. Mallick testified that he met Morris Jaffe in 1968 while both men were working on the Humphrey campaign. [G. Mallick III Tr. 81.] The men would see each other occasionally over the years; Mallick considered Morris a friend, although not a close friend. [G. Mallick III Tr. 82.] Doug Jaffe and Michael Mallick met through their fathers and became friendly as well. The Jaffes are in several businesses: they own a large shopping center and other real estate developments, they own a company which refurbishes airplanes, and they invest in oil ventures. [G. Mallick III Tr. 116-117.]

[88] This Assignment is recorded at Vol. 688, page 562, of the Orange County, TX Real Property Records.

[89] The drilling reports are completed every day at approximately 7:00 a.m., and recount the events of the past 24 hours. Thus a report dated March 5, 1988 describes what happened from approximately 7:00 a.m. on March 4 to 7:00 a.m. on March 5.

testing and production. [Exhibit E-122, pp. 7-13.] The initial tests on the well on April 23, 1988 indicated flows of oil and gas in commercially productive amounts. [*Id.*] Over the first 30 hours, a maximum average flow rate of 1,000 MCF/D and 75 bbl/D were indicated. [*Id.* at 13.] The well tested at the maximum rate of 1,600 MCF/D and 125 bbl/D. [*Id.*] However, over the next few days, testing revealed alarming declines in oil and gas production and well pressures were occurring. [Farmer Aff., ¶ 9.] The well clearly had tapped into a reservoir containing some oil and gas, but because the well pressure readings steadily declined during all tests, it was also clear that the well was not a gusher. [Exhibit E-122, pp. 13-18.]

Brammer Engineering undertook numerous attempts to stimulate production in the well. For instance, Brammer injected acid, xylene, ammonium chloride, and other chemicals into the well; attempted to unclog the well perforations, believing the perforations had become clogged with fine sand; and injected nitrogen into the well. [*Id.* at 13-20.] All of these efforts had roughly the same result—temporary stimulation of production, but the wellhead pressures inexorably dropped as time progressed. [*See, e.g.*, Exhibit E-122, p. 18.][90] By May 4, 1988, the well had declined to a point that it was uneconomical to test the negligible quantities of gas and no oil. [Exhibit E-122, pp. 18-19.] By May 10, 1988, Brammer had spent nearly a million dollars trying to complete the well. [*Id.* at 21.] The well was never the successful well described by Michael Mallick. [M. Mallick Tr. 49.]

Despite these disheartening results from the well, on May 10, 1988, Union Rheinische Petroleum, Inc. ("URP"), a Texas petroleum investment corporation, purchased Michael Mallick's four percent interest in the Sabine Lake venture. [Exhibit E-57.] Michael Mallick's deal with URP was structured as follows: URP loaned Mallick $440,000 (of which $90,000 was reserved to pay Mallick's share of the drilling and completion costs); Mallick executed a Deed of Trust to URP conveying all rights to Mallick's proportionate interest in the oil and gas revenues from the Sabine Lake Prospect until URP was repaid all of its $440,000; once URP recovered its money, Mallick would assign to URP 2.5 percent of the working interest in the well, with Mallick retaining a 1.5 percent working interest; and if the oil and gas revenues are inadequate to repay the loan, URP's sole recourse would be to Mallick's interest in the well. [*Id.*] What this

[90] For example, Brammer tested the well for 17 and one-half hours from 7:00 p.m. on May 2, 1988 to approximately noon on May 3, 1988. During that test, the well maintained a constant choke diameter but the flowing tube pressure dropped from 1787# to 1090# from 7:00 p.m. to 11:00 a.m. During that same time period, the gas flow dropped from 416 MCF/D to 216 MCF/D. [Exhibit E-122, p. 18.]

meant was that Mallightco received $350,000 cash, owed Jaffe nothing for drilling and completion expenses, and would receive 1.5 percent of the working interest of the well after URP received $440,000 in oil and gas revenues, but Mallightco would not be personally liable for repayment of the loan. [M. Mallick Tr. 51-54.]

Soon after Mallightco executed this agreement with URP, it tendered an offer to the Trustee of the James C. Wright, Jr. Blind Trust (the "Blind Trust"), to repurchase all the trust's shares of Mallightco, Inc. stock for $350,000. [Exhibit E-58, pp. 1-2.] Michael Mallick submitted Mallightco's unaudited balance sheet dated May 16, 1988. [*Id.*, p. 3.] The balance sheet reported Mallightco's total assets to be $1,248,632, and its total liabilities to be $545,529. [*Id.*] Mallightco thus reported a net worth of $703,102. [*Id.*] A majority of the company's assets was its Sabine Lake investment, valued at $650,000. [*Id.*]

Michael Mallick testified that he valued the Sabine Lake investment by calling Douglas Jaffe, the man from whom he purchased his interest and one of the leading investors in the drilling prospect, who said the well was worth 7 to 8 times Mallightco's initial investment of $90,000. [M. Mallick Tr. 75.] Michael Mallick said he chose a figure towards the bottom of that range and estimated Mallightco's interest in the well at $650,000. [*Id.*] Michael Mallick testified he valued the Gemstones investment at $93,000 because they were valued at that amount the year before, and nothing had changed. [M. Mallick Tr. 80.] He valued the Winderwood investment at $35,000 because the general partner of the project stated Mallightco could expect to receive that much in future distributions. [M. Mallick Tr. 85.]

Mallightco's offer of $350,000 consisted of $230,000 cash (of which approximately $80,000 would be used to repay the Trust's indebtedness to Mallightco) and $120,000 in the form of an unsecured, five-year, 10-percent-interest-bearing note subordinate to all present and future debt of Mallightco. [Exhibit E-58, pp. 1-2.] The trustee accepted the offer at the end of May 1988, without questioning any of the relevant figures on the Mallightco balance sheet. [*Id.*, p. 1; M. Mallick Tr. 62, 84.]

The sale was consummated on June 9, 1988. [Exhibit E-58, pp. 6-7.] Mallightco paid the Blind Trust two checks totalling $230,000 and a promissory note in the amount of $120,000. [*Id.*] The Trust endorsed one check over to Mallightco for $81,821.70, representing the outstanding balance of the Trust's indebtedness to Mallightco, including interest accrued to date, and tendered the Trust's stock certificates back to Mallightco. [*Id.*]

Michael Mallick testified that after the stock redemption was completed, he learned that disaster had befallen the Sabine Lake Prospect. [M. Mallick Tr. 69.] Michael Mallick testified that the drilling company had used "old concrete" to case the well, and the well caved in, and was ruined. [*Id.*] He testified that the operator of the well then hired another drilling company to drill an offset well, trying to tap into the same pool of oil and gas. [M. Mallick Tr. 70.] Unfortunately, the offset well was a dry hole. [*Id.*; Exhibit E-56, p. 5.] Michael Mallick stated that as of October 1988, the Sabine Lake venturers were trying to determine whether to bring in a new driller to drill a third hole, to sell their interests, or to do something else. [M. Mallick Tr. 66.]

Records received from Brammer Engineering reveal that throughout the month of May 1988, Brammer kept trying to stimulate pressure in the well and to turn the well into a profitable producer. [Exhibit E-122, pp. 17-29.] However, all of Brammer's efforts were unsuccessful. Brammer shut-in the well on June 9, 1988, having spent $2,890,000 to drill and complete the well; Brammer suspended all operations for almost two months. [*Id.*, p. 32.]

On August 3, 1988, Brammer began operations to drill a sidetrack well (what Michael Mallick referred to as an offset well). [*Id.*, p. 33.] The sidetrack well was drilled from August 3 to September 20, 1988, and cost nearly $1.1 million to drill. [*Id.*, pp. 33-46.] No oil or gas was discovered in the sidetrack well. [Exhibit E-124.] Brammer Engineering promptly decided to plug the original well and the sidetrack well and to abandon the site. Plugging operations were concluded on September 24, 1988; the drilling derrick and barge were removed; and the site was abandoned on September 25, 1988. [Exhibit E-122, pp. 47-48.]

As of the date of this Report, the James C. Wright, Jr. Blind Trust no longer has any interest in Mallightco or in any Mallick owned or controlled entity. [G. Mallick II Tr. 38.]

(6) Analysis and Conclusions

It is clear that Mallightco served as a source of funds for both the Mallicks and the Wrights. Mallightco loaned money to both families, paid Betty Wright a salary, and occasionally made cash distributions to the Wrights. The House Rules do not prohibit Members or their spouses from borrowing money, so long as the loans are "made in a commercially reasonable manner." [Select Committee on Ethics, Advisory Opinion No. 7.] To be "commercially reasonable," loans must at least require that the loan be repaid and that interest be charged. [*Id.*] Mallightco charged interest on all of its loans to the Wrights,

and continually accrued interest when payments were not being received. However, it is clear Mallightco charged Betty Wright a below market interest rate on the $75,000 loan.

Marlene Mallick borrowed money from Ridglea Bank at 13.5 percent initially, the same rate at which Mallightco loaned $75,000 to Betty Wright. However, while the rate charged by the Bank to Marlene Mallick fluctuated over time, the rate Mallightco charged Betty Wright stayed at 13.5 percent. Since in 1981, 1982 and 1984, Mallightco charged Betty Wright less than the prevailing market interest rate, Betty Wright received gifts in the form of reduced interest rates from Mallightco in 1981, 1982 and 1984.

The value of these gifts is calculated by comparing the interest paid by Betty Wright at a constant rate of 13.5 percent with the interest Betty Wright should have paid at the market rate. For example, on April 10, 1981, Marlene Mallick signed a 90-day note at 17 percent, while Betty Wright was still paying 13.5 percent. For that 90-day period, Betty Wright accrued $2,497 in interest, when she should have accrued $3,144 in interest at the market rate. Hence, Mallightco gave Betty Wright a gift of interest in the amount of $647 during that 90-day period.

Altogether in 1981, Mallightco gave Betty Wright four gifts of reduced interest totalling $2,940. In 1982, Mallightco gave Betty Wright three gifts of reduced interest totalling $2,058. In 1984, Mallightco gave Betty Wright two gifts of reduced interest totalling $303. [*See* Table E-7.]

We find that through Mallightco, the Mallicks made numerous gifts to Wright during 1981, 1982 and 1984 when Wright failed to repay the $75,000 loan on which he was charged a reduced rate of interest. Wright's receipt of the gifts repeatedly violated House Rule XLIII, clause 4, in 1981, 1982, and 1984 in that each gift was worth more than $100, and the source of the gifts had a direct interest in legislation before Congress. Wright failed to report the reduction in interest as gifts on any of his Financial Disclosure Statements [*see* Exhibits E-2 through E-11], thus violating House Rule XLIV in 1981, 1982, and 1984, as well.

We further find that the Wrights received a gift from the Mallicks when Marlene Mallick used her creditworthiness to obtain money from Ridglea Bank to loan to Betty Wright. Betty Wright could not have obtained such a large unsecured loan on her own, so Marlene Mallick acted, in effect, as a loan broker for the Wrights. This service clearly was worth something to the Wrights although we cannot place any precise value on Marlene Mallick's services. We believe it is

clearly worth more than $100. Wright's acceptance of Marlene Mallick's lending services thus violated House Rule XLIII, clause 4; and since he failed to report it on his 1980 Financial Disclosure Statement, violated House Rule XLIV, as well.

With respect to the securities transactions made by Mallightco, we cannot yet determine whether or not any violations of House rules has occurred. Many of Mallightco's investments were common, run-of-the-mill stock purchases and sales. These transactions, whether conducted through a broker or privately, all appear perfectly ordinary and unworthy of further exploration. Nor is there anything improper about acquiring securities on margin, as Mallightco did. Merrill Lynch charged Mallightco interest and required repayment of the funds it loaned. However, the fact Mallightco purchased stock on margin is important insofar as it weighs on Mallick's credibility. He testified the company did not plan to borrow money or buy stock on margin; however, as we have seen, within the first year of its existence, Mallightco had borrowed $150,000 from one of its stockholders and purchased almost $40,000 worth of securities on margin. Nevertheless, we recommend further investigation into Mallightco's investments in Delhi International Oil and Supron Energy Corp. The magnitude of Mallightco's profit and the possibility that Mallick or Wright had some non-public information make further investigation necessary.

With regard to Mallightco's investment in the Gemstones, we find it an unusual investment for a "little investment club", but also find that it does not appear to violate any House Rules. There is no evidence Wright was anything but a purely passive investor in the Gemstones without any decision-making authority. George Mallick decided on behalf of Mallightco to make the investment; Christopher Mallick acquired the stones in Brazil, had them finished in the United States and marketed them. There is no evidence that Wright's role as an investor had any influence upon the acquisition or marketing of the Gemstones. Therefore, we believe there is no basis for pursuing this matter further.

With regard to the Winderwood investment, we also find that it does not appear to violate any House Rules. Winderwood was very lucrative for Mallightco--on its $39,000 investment it profited $41,000 by June 1988 with the expectation of $35,000 more to come. Yet the Rules do not prohibit Members from making money. Mallightco paid the full price for its one-sixth share, and received one-sixth of the revenues. Swann explained how he believed he was dealing with George Mallick, a successful Texas real estate developer and potential future source of capital. Only when Swann received

Mallightco's check did he realize that Mallightco, not Mallick, was his partner. Swann did not know that Wright was involved in Mallightco until sometime later.

There is no evidence that Swann offered Wright the opportunity to invest in Winderwood because of Swann's position in American Pioneer Savings Bank or in order to lobby Wright on savings and loan issues or in order to give a gift to Wright. There is no evidence that Swann invited Mallick into the deal because of Mallick's ties to Wright, in order to influence the Mallick savings and loan report, or for any improper reason.

We believe further investigation into the Sabine Lake investment and the loan from Union Rheinische Petroleum is necessary before any conclusion can properly be drawn. The amount of the URP "loan" appears to be dramatically greater than the value of the well on May 10, 1988. The URP loan gave Mallightco $440,000. The value of the Sabine Lake well is open to some dispute.

The value of an oil or gas well at any particular time can be calculated in several ways. For instance, petroleum expert Joe Farmer[91] uses a transaction value method. Farmer values Mallick's interest in the well based upon what a reasonable oil investor might have paid for the interest on May 10, 1988. Farmer states that a reasonably generous investor might have offered to reimburse Mallick for his actual costs up to that date, to assume all of Mallick's future obligations and to assign Mallick a small override if the well became successful in return for an assignment of the revenues generated by Mallick's four percent interest in the well. [Farmer Aff., ¶ 11.] By May 10, 1988, Brammer had spent approximately $2.25 million to drill and to try to complete the well. It would have cost Farmer's hypothetical investor $98,840 (including $9,120 leasehold cost) to buy Mallicks' four percent interest on May 10, 1988. [Farmer Aff. ¶ 10(a).] In addition, since Brammer spent another $646,000

[91] Mr. Farmer is an independent petroleum and business consultant with an office in Houston, Texas. He has been in the oil and gas exploration business since leaving the Air Force in 1957. Mr. Farmer received a Bachelor of Science degree in geology from Texas A&M in 1955. From 1957 to 1968, he was the Assistant Chief Geologist for Placid Oil Company. In 1968, Mr. Farmer joined Union Carbide Petroleum Corp. as its Exploration Manager. When Union Carbide was acquired by Ashland Oil, Inc. in 1971, Mr. Farmer became the Vice-President for Domestic Exploration and Production of Ashland Exploration, Inc. In 1973, Mr. Farmer was promoted to Executive Vice-President of Ashland Exploration. In 1977, he became the Assistant Chief Administrative Officer of Ashland Oil. In 1979, Mr. Farmer moved to Mesa Petroleum, where he was the Vice-President in charge of the Gulf Coast region. In late 1980, Mr. Farmer became President and Chief Operating Officer of Union Texas Petroleum Corp. Since July 1983, he has been an independent consultant on oil and gas matters.

after May 10, 1988, trying to complete the first well, plus another $1,100,000 drilling the sidetrack well, the investor would have paid another $69,733 (for a total of $168,571) for Mallick's four percent interest. [Farmer Aff. ¶ 11.]

However, Farmer states that a more likely trade proposal scenario is for the buyer *not* to reimburse Mallick his sunk costs, but to agree to pay only future costs. [*Id.*] Under this scenario, a buyer would have paid only $69,733 for Mallick's four percent interest in the Sabine Lake well.[92]

Regardless of the method used to value the well on May 10, 1988, it seems clear that Michael Mallick's four percent interest was worth a fraction of the $440,000 paid by URP. While the "loan" from URP appears to be a gift to Michael Mallick or Mallightco, we cannot yet conclude that any House Rules were violated. During the entire time Mallightco was involved in Sabine Lake, Wright's ownership of his Mallightco stock was in a blind trust. We cannot say whether Wright knew of the Sabine Lake transaction, the URP loan, or of the great disparity between the loan price and the value of the fractional interest in the well; nor whether URP had a direct interest in legislation. Accordingly, we recommend further investigation into Mallightco's loan transaction with URP.

Turning to Mallightco's dividend policy, between September 1986 and January 1988, the Wrights (or the Blind Trust) received cash dividends from Mallightco totalling $59,000, while the Mallicks received the same amount in the form of reduced debt. [Exhibits E-50, E-54.] Both the Wrights and the Mallicks clearly benefitted from these transactions. Although it would appear that the Wrights received a greater benefit from having obtained dividends in cash, we find no basis in the records of Mallightco for concluding that either family actually benefitted more than the other. The Mallicks were paying 13.5 percent interest on their $75,000 loan; from September 1986 to January 1988, the prime interest rate fluctuated between 7.5 percent and 9.25 percent. Thus, it made economic sense for the Mallicks to pay off their loans. The Wrights were paying 10 percent on part of their loans and 13.5 percent on the remainder. [Exhibits E-30, E-35.] While the Wrights may have economically benefitted if they paid off their loan, they were free to accept cash instead. Therefore, while the company's dividend policy is highly irregular and appears to have favored the Wrights, we find the

[92] Farmer also proposed a third valuation method. URP's price of $440,000 for a 4 percent interest translates to a value for the entire well of $11 million. Farmer believes there was only a 10 percent chance that the well would produce $11 million in revenues. Therefore, using simple arithmetic, the value of the well factoring risk into the equation yields a value of $1.1 million for the entire well, or $44,000 for Mallick's 4 percent interest.

Mallicks received economically equivalent benefits. For this reason, we believe there is no basis for pursuing this matter further. We wish to point out, however, that the economic equivalency conclusion is predicated entirely on the assumption that the Wrights could and would pay their debt to Mallightco no matter what financially befell Mallightco.

With respect to the buyout of Wright's shares of Mallightco stock in 1988, we believe a gift of interest forgiveness occurred. As of December 31, 1987, the Wrights owed Mallightco $77,581 in principal and $12,678 in outstanding interest. [*See* Table E-4.] However, when Mallightco repurchased the Wrights' shares of the company on June 9, 1988, Mallightco required them to pay only $77,581 in principal and $4,240 in interest accrued since January 1, 1988. [Exhibit E-58, p. 6.] The Wrights now owe Mallightco nothing. Mallightco's records do not reflect what happened to the interest Wright owed as of December 31, 1987. Mallightco's buyout offer charges Wright only for the interest which accrued during 1988. [*Id.*] There is no record that Mallightco received any payment from the Wrights for the pre-1988 interest. Thus Mallightco, either intentionally or inadvertently, wrote off that interest debt. We find Mallightco gave the Wrights a gift in the form of interest forgiveness in the amount of $12,678.

However, when Wright placed his assets in the Blind Trust, his disclosure form listed as one of Mallightco's assets notes receivable from himself and Betty Wright in the amount of $82,562. [Exhibit E-10, p. 8.] Thus, Wright acknowledged owing nearly $5,000 in accrued interest as of September 30, 1987. Even if Mallightco forgave a portion of Wright's outstanding interest, there is no indication that it did so at his behest or that he even knew of this forgiveness. Accordingly, while Mallightco may have bestowed a gift on Wright's Blind Trust, Wright may not have knowingly "accepted" that gift. We believe there is therefore no basis for pursuing the matter further. Of course, once Mallightco and the trustee become aware of this interest forgiveness through this Report or otherwise, we expect the trustee will ensure that interest will be promptly repaid.

Finally, determining whether the Wrights' sale of their Mallightco stock involved a gift requires simply comparing the price Mallightco paid for Wright's shares of stock with the true value of that stock. Mallightco paid Wright $230,000 cash plus a $120,000 unsecured subordinated note. [Exhibit E-58.] Although Michael Mallick testified that the note had only "minimal" value because it would be repaid only if Mallightco became wholly free of debt and was prospering [M. Mallick Tr. 89], we believe the note has more than "minimal" value. The only substantial debt possessed by Mallightco

was the $440,000 non-recourse debt to Union Rheinische; the $120,000 note Mallightco gave to Wright was subordinated to that obligation. However, since the Union Rheinische note is payable only from Sabine Lake revenues, Mallightco is free to repay Wright's note with revenues from other sources. In that case, Union Rheinische would not have a priority claim against Mallightco.

Nevertheless, because of its unsecured, subordinate nature, the note is not worth its full face value. It is impossible to determine a specific dollar value for the note. Therefore, the total package tendered by Mallightco can only be valued in the range $230,000 to $350,000.

The next step is to compare the price paid with the value of Wright's Mallightco stock. Many different methods of valuation could be used—discounting expected streams of dividend income to present value; multiplying annual earnings per share by some constant; estimating potential growth; etc. Here, Mallightco determined that each share of stock was worth a fraction of the company's net worth. This is an acceptable method of valuing a corporation's stock.

Determining Mallightco's true net worth is difficult. The company's balance sheet of May 16, 1988, which accompanied the repurchase offer, was unaudited. Moreover, Mallightco has submitted no documentation supporting its valuation of its assets. Of the various assets on Mallightco's balance sheet, three are difficult to value. Cash, securities, interest and notes receivable, and the automobile are all subject to valuation with a reasonable degree of certainty. Cash and receivables are valued at face value; publicly traded securities are valued by the securities exchanges on a daily basis; and an automobile can reasonably be valued at cost less accumulated depreciation.

Michael Mallick relied on the opinions of others to value the three remaining assets—the Sabine Lake investment, the Gemstones investment, and the Winderwood investment. Michael Mallick testified that Douglas Jaffe estimated the value of Sabine Lake, Christopher Mallick estimated the value of the Gemstones, and the general partner estimated the value of Winderwood.

We believe that the method Michael Mallick used to value the Sabine Lake investment was improper, and that he significantly overvalued the well. Mallick valued the Sabine Lake investment at $650,000—seven times more than the costs to date. There is no reasonable basis for estimating the value of an oil and gas investment at a certain multiple of drilling expenses. [Hockaday Aff.

II, ¶ 14.] The value of a gas well depends upon many factors—the total reserves in the gas field, the percent of gas which can be recovered, the rate at which the gas can be extracted, the market price for gas, and so forth. [*Id.*] The most reliable way to value a gas well is to hire a competent petroleum engineer to study the well. It would have cost Mallightco $1,500-$2,000 to perform such an evaluation. [*Id.*]

We believe further investigation must be undertaken to determine whether Mallightco's valuation of the Sabine Lake investment on May 16, 1988, was proper. Farmer's valuation of the well on May 10, 1988, casts grave doubts on the accuracy of Michael Mallick's valuation of the well on May 16, 1988. In addition, oil and gas expert Donald E. Hockaday, Jr. states that Mallightco's four percent of the Sabine Lake well was virtually worthless after May 10, 1988, because the well would never produce enough revenues to pay off the URP loan. [Hockaday Aff. II, ¶ 15.] Yet Michael Mallick valued the interest at $650,000 on May 16, 1988. We need to learn whether Michael Mallick actually received an opinion from Douglas Jaffe, and if so why Mallick relied exclusively on Jaffe's opinion. We need to determine the basis for Jaffe's opinion. If Michael Mallick knew the well was not really worth $650,000, we need to determine whether he intended to make a gift to Wright or Wright's Blind Trust, and we need to learn what Wright knew of the transaction, if anything.

Special Outside Counsel recommends that the Committee continue the investigation into Mallightco's Sabine Lake investment and Mallightco's buy-back of the Wright's stock from the Blind Trust.

c. Betty Wright's Employment With Mallick, 1979-1984

(1) Betty Wright's Employment With Mallick Properties, Inc., 1979-1980

Prior to marrying Jim Wright in 1973, Betty Hay worked on the staff of the Subcommittee on Investigations and Oversight of the House Committee on Public Works.[93] Before that time, she worked as the executive secretary of the Hotel Texas, one of the leading hotels in the Fort Worth area, for ten years. [Wright Tr. 38.] She also was the vice president and secretary of a construction and land development company. [Wright Tr. 38.]

In 1979, Mallick Properties, Inc. hired Betty Wright as a "consultant" to explore the feasibility of expanding the Mallick Concept

[93] The name of the subcommittee was subsequently changed to the Subcommittee on Investigation and Review.

beyond Fort Worth. Wright's 1978 Financial Disclosure Statement also reported that his wife, Betty Hay Wright, received an income from Mallick Properties, Inc. during the year [Exhibit E-2, p. 3]; however, Mrs. Wright did not begin working for Mallick Properties, Inc. until April 1979 at a salary of $18,000 per year. [G. Mallick I Tr. 188-190, 195.] She worked for Mallick Properties, Inc. until the end of 1980. [G. Mallick I Tr. 202-203.]

Mallick testified at length about the nature of the services rendered by Betty Wright to Mallick Properties, Inc. during 1979 and 1980. Mallick said Betty Wright was employed as a part-time employee/consultant working on the expansion of the Mallick Concept beyond Tarrant County. [G. Mallick I Tr. 188-89.] She worked on the development of the full color brochure entitled "The Mallick Community Concept." [G. Mallick I Tr. 139.] The brochure, copyrighted 1979, is a 24-page full color brochure which describes the history of the Mallick Concept and its implementation at Hulen Place and Park Ridge. [Exhibit E-1.]

Both Mallick and Pamela Smith agreed that Betty Wright worked on the Mallick Concept brochure. Mallick testified in general terms that Betty Wright "helped me write and prepare that [brochure]. She helped with the art work on it." [G. Mallick I Tr. 139.] Smith, Vice President and General Manager of Mallick Properties, Inc. in 1979-1980, testified that she, Betty Wright, George Mallick, and other staff members developed the Mallick Concept brochure during 1979 and 1980. [Smith I Tr. 26-27.] However, no witness provided a detailed description of what contribution Betty Wright made to the Mallick Concept brochure. Mallick has produced no contemporaneous memoranda, time sheets, drafts, or similar documents evidencing Betty Wright's work.

Betty Wright also helped Pamela Smith prepare market studies of Austin and San Antonio, Texas in anticipation of Mallick Properties, Inc.'s expansion into other cities in the Sunbelt. [Smith I Tr. 31; Exhibits E-59, E-60.] Mallick Properties, Inc. considered expanding into several southern cities from Raleigh, North Carolina to Tucson, Arizona [Exhibit E-1, pp. 6-7], although it explored Austin and San Antonio most thoroughly. [Smith I Tr. 31.] Smith testified that Betty Wright traveled extensively in Austin and San Antonio and spent 25-35 hours working on the Austin report. [Smith I Tr. 31, 47.] Smith also said that Mrs. Wright assisted Mallick in securing options to purchase land for potential Mallick communities. [Smith I Tr. 35.]

In addition to working on the brochure and market studies, one of Betty Wright's tasks was introducing Mallick and Smith to key people in Austin and San Antonio. [Smith I Tr. 31.] As Smith

described it, "she would have a contact with the Chamber of Commerce. She would know of a law firm there that would be a good law firm for real estate investments. She would know a good broker that we considered to be reputable in the community. She would have an engineering firm that we could use that—Austin is very difficult in the environmentalist department to get things through. She would have a good contact to work with in those areas." [Smith I Tr. 31.] Smith testified she worked directly with Betty Wright in using the contacts Betty Wright provided. [Smith I Tr. 32.]

Mallick abandoned the notion of expanding the Mallick Concept beyond Fort Worth when interest rates soared in 1980. [G. Mallick I Tr. 204-205.] However, Mallick kept Betty Wright on the payroll of Mallick Properties, Inc. until the end of 1980, at which time she became an employee of Mallightco. [G. Mallick I Tr. 202.]

Mallick estimated that during Betty Wright's tenure at Mallick Properties, Inc., she worked an average of three to seven days a month. [G. Mallick I Tr. 190.] Pamela Smith estimated that Betty Wright worked 10 to 14 days a month on the Mallick Concept [Smith I Tr. 32-33]; however, Smith later testified with respect to Mallightco that a "day" of work for Betty Wright lasted generally from 2:00 p.m. to 7:00 p.m. [Smith I Tr. 120-121.] Thus, it cannot be determined precisely how many eight-hour days Betty Wright worked per month for Mallick Properties, Inc.

(2) Betty Wright's Employment With Mallightco, 1981-1984

On January 1, 1981, Betty Wright went on the payroll of Mallightco at a salary of $1,500 per month. [G. Mallick I Tr. 106, 109.] Mallick described Betty Wright as a consultant to Mallightco hired to seek out and research new investment opportunities. [G. Mallick I Tr. 107.]

Mallick recounted several investment opportunities which Mrs. Wright supposedly researched on behalf of Mallightco during 1981 and 1982. However, Mallightco never actually invested in any of the investment opportunities Betty Wright researched. According to Mallick, he and Betty Wright looked into investing in a processing plant designed to convert sugar cane to alcohol. [G. Mallick I Tr. 234-35.] Mallick said they studied this project for three months, but decided "that we couldn't put it together." [G. Mallick I Tr. 234-35.] According to Mallick, he and Betty Wright also considered investing in a 165-acre tract of land south of Fort Worth being held for a future development. [G. Mallick I Tr. 235.] He said they did some

engineering studies on the land, but decided that investment "wouldn't be for us." [G. Mallick I Tr. 235.] Smith also recalled this investment opportunity [Smith I Tr. 28] and stated that Betty Wright spent about four days studying it. [Smith I Tr. 120.]

Mallick also testified that Betty Wright studied Delhi Oil Company and Supron Energy Corporation as potential securities investments, but played no role in the decision to invest. [G. Mallick I Tr. 238, 242-243.] In fact, Mallightco actually invested in Delhi and Supron in 1980, *before* Mrs. Wright began drawing a salary from Mallightco. [*See* Table E-2.] Mallick could not remember how many days Betty Wright worked during 1981 and 1982 for Mallightco. [G. Mallick I Tr. 242.]

Mallick testified that during 1983, he and Betty Wright "did some work on wheat cakes." [G. Mallick I Tr. 235.] They explored a process for making wheat into bulgur, which is packed and given to people in foreign countries. [*Id.*] Mallick said that bulgur wheat cakes have a long shelf life so it is good for areas with food shortages. [G. Mallick I Tr. 235-36.] Mallick said they studied a plant in Saginaw, Texas, for this project, but "saw we wouldn't be able to do anything there." [G. Mallick I Tr. 236.] Mallick and Betty Wright also met on various occasions with a number of people for lunches and dinners to see if any investment opportunities were available. [G. Mallick I Tr. 235.] However, none of these informal meetings led to in-depth studies or any actual investments. [G. Mallick I Tr. 235.]

Pamela Smith recalled several additional investment opportunities Betty Wright studied. According to Smith, Mrs. Wright and Mallick studied extensively Bayrite White Corporation, a company involved in the processing of white paint pigments. [Smith I Tr. 27.] Mallick subsequently recalled studying this investment opportunity, and testified that he and Betty Wright discussed the possibility of investing in the Bayrite White Corporation or the process it used to produce paint pigment. [G. Mallick II Tr. 21-22.] Apparently, Mallick decided not to invest in Bayrite because the particular white paint pigment they explored was not white enough. [G. Mallick II Tr. 22.] Smith testified that Betty Wright spent four days studying the Bayrite investment. [Smith Tr. 120.]

Pamela Smith also described a visit by a Nigerian dignitary regarding a potential investment in Nigerian oil. [Smith I Tr. 28-29.] According to Smith, the Nigerian oil man came to Fort Worth and met with Mallick and Betty Wright. [Smith I Tr. 29.] Smith did not remember how Mallightco learned of this Nigerian oil investment, and did not attend the meeting between the Nigerian,

George Mallick, and Betty Wright. [Smith I Tr. 97.] Betty Wright was there to decide whether to go into the investment or not. [Smith I Tr. 97-98.] Mallightco ultimately did not invest in Nigerian oil.

Finally, Pamela Smith related that Betty Wright and George Mallick traveled to New York to study a possible investment in the movie "Annie." [Smith I Tr. 29, 94-96.] Mallick and Mrs. Wright met with attorneys for the project, and Mrs. Wright reviewed the documentation for the limited partnership being created. [Smith I Tr. 95.] Mrs. Wright also discussed the project with Mallick and they decided it would be too expensive to participate. [Smith I Tr. 29, 95.] The investment would have cost Mallightco $250,000. [Smith I Tr. 29.] Smith estimated that Betty Wright spent four days studying the "Annie" project. [Smith I Tr. 120.]

In addition to these four specific projects—Nigerian oil, Bayrite White paint pigment, land in Everman, Texas, and the movie "Annie"—Smith recalled a few other potential investments Betty Wright studied on behalf of Mallightco. For example, Betty Wright spent two days looking into an investment in a chain of banks with a Dallas man. [Smith I Tr. 119-20.] However, Mallightco never made any investment in Dallas banks. Mrs. Wright spent two days looking into an investment in a chemical company, but again Mallightco never invested in any chemical company. [Smith I Tr. 27, 120.]

When questioned regarding Betty Wright's training, education, and experience that would qualify her to be an investment analyst, Mallick stated that Mrs. Wright was very intelligent and was a good business woman. [G. Mallick I Tr. 239.] He conceded, however, that she was not an expert on the stock and bond market. [*Id.*]

When Jim Wright appeared before the Committee, he stated that his wife was well qualified to work for Mallightco seeking investment opportunities. To illustrate, Wright related an anecdote demonstrating his wife's business acumen. He said Betty Wright was instrumental in obtaining the lowest mortgage interest rate for their home in McLean, Virginia. [Wright Tr. 43.] He said that Betty Wright converted their adjustable rate mortgage to a fixed rate mortgage at the precise time when interest rates were their lowest during the past five years. [*Id.*] He said this incident was an example of the kind of financial services his wife could provide Mallightco. [*Id.*]

From 1981 through 1984, Mallightco paid Betty Wright a total of $72,000 (less taxes) in salary. She was the only person drawing a salary from Mallightco—neither George Mallick nor Pamela Smith was paid for the services they rendered. [G. Mallick I Tr. 211; Smith I

Tr. 24-26.] In fact, for much of the time Betty Wright was employed by Mallightco, she constituted the company's biggest expense and consumed the lion's share of the company's earnings. For example, in 1982, Mallightco's total cash receipts were $63,801; of that sum, Mallightco spent nearly a third on Betty Wright's salary and payroll taxes. [Exhibits E-61, E-62.] More pointedly, in 1984, Mallightco's total cash receipts were $23,368, of which it spent $20,030 (over 85 percent) on Betty Wright's salary and payroll taxes. [*Id.*]

By early 1984, it became clear that Mallightco could no longer afford to pay Mrs. Wright's salary. On many occasions, Mallightco did not have enough cash in its checking account to pay her salary, and either delayed payment, borrowed money from the Mallick Company (a sole proprietorship of George and Marlene Mallick), or overdrew its account. [Hoeh Tr. 37-38.] For example, in August 1983, Mallightco had less than $1,000 in its checking account and delayed paying Mrs. Wright's monthly net salary of $1,204.50 until September 6, 1983, when the Mallick Company loaned Mallightco $1,600 to cover her August and September salary. [Exhibit E-16, p. 13.] The same scenario recurred in May 1984; Mallightco had only $30 in its checking account on May 2, 1984 when the time came to pay Mrs. Wright's salary. [Exhibit E-16, p. 15.] The Mallick Company loaned Mallightco $1,250 to meet its payroll. [*Id.*]

Again, in mid-June 1984, Mallightco had only $320 in its checking account and delayed paying Mrs. Wright's June salary until July 5, 1984, when the Mallick Company loaned Mallightco $4,000. [Exhibit E-16, p. 15.] On October 5, 1984, Mallightco was overdrawn by nearly $200; the Mallick Company loaned Mallightco $1,450 to cover the overdraft and to pay Mrs. Wright's salary. [Exhibit E-16, p. 16.] Finally, in November and December 1984, Mallightco issued Mrs. Wright paychecks, but could not honor them until January 1985, when the Mallick Company and The Hulen Towers South (another Mallick entity) loaned Mallightco nearly $1,800. [Hoeh Tr. 37-38; Exhibits E-16, p. 16; E-63.]

In December 1984, Mallick informed Mrs. Wright and she agreed that Mallightco could no longer afford to pay her a salary. [G. Mallick I Tr. 280.] They agreed that Mrs. Wright would leave Mallightco's payroll as of December 31, 1984, and would begin paying for the condominium in which she and her husband had been living. [*Id.*; *see* Section III. E.3.d(2) of this Report.] Mallick memorialized his agreement with Mrs. Wright in a memorandum dated December 10, 1984, which stated in its entirety: "To confirm our conversation concerning your salary from Mallightco, it is agreed that your salary will be suspended effective January 1985. Our arrangement on the apart-

ment will continue, based on an agreeable per diem rate for each day occupied, calculated at the end of each year. Other arrangements will be made as to your compensation from Mallightco at a future date." [Exhibit E-64.] This memorandum was the only memorandum Mallick produced relating to Mrs. Wright's employment with Mallightco. Mallick produced no memorandum providing a job description for Mrs. Wright, any work product produced by Mrs. Wright, or any correspondence between himself and Mrs. Wright regarding her work.

Mrs. Wright did not return to Mallightco's payroll at any time after the memorandum was sent and received.

(3) Analysis and Conclusions

Determining whether the salaries paid to Mrs. Wright by Mallick Properties, Inc. from 1979 through 1980 and Mallightco, Inc. from 1981 through 1984 were gifts requires asking and answering but a single question—did Mrs. Wright perform services commensurate with the salary received? Unfortunately, underlying this seemingly simple inquiry are a myriad of difficult issues of valuation. Valuing personal services is often subjective and not susceptible to rational analysis. For example, how should one judge investment advice: by the quality of results, by the number of hours spent, or some other method?

Clearly, no single, objective criterion can be used to value an employee's services. We must consider the employee's background, experience, education, and training; the number of hours the employee works; the work product created by the employee; the wages paid to similar employees; and the employer's subjective sense of the employee's worth. No one factor is controlling while all are relevant.

Considering these factors with regard to Mrs. Wright's employment with Mallick Properties, Inc. during 1979 and 1980, we do not conclude that Mrs. Wright's salary was a gift. Both Mallick and Smith testified that Mrs. Wright frequently came to Fort Worth to work on the expansion of the Mallick Concept. Estimates of the number of days she worked ranged from three to fourteen days per month. Mallick and Smith have provided several examples of Mrs. Wright's work product—the Mallick concept brochure, the Austin study and the San Antonio study. [Exhibits E-1, E-59, and E-60.] Mallick and Smith also gave a general description of Mrs. Wright's ability to introduce Mallick to politicians, attorneys, realtors, and engineers in Austin and San Antonio. Furthermore, Mallick Properties, Inc. had other employees at commensurate annual salaries.

In addition, Mrs. Wright may have had some relevant experience and training for the job. Her experience as a staff member of a subcommittee of the House Committee on Public Works could have given her knowledge of roads, dams, and similar large public projects; at the same time, she undoubtedly acquired some knowledge of the real estate business. But without a doubt, her greatest asset was her knowledge of public officials throughout Texas. Mallick hired Mrs. Wright to ease entry into the Austin and San Antonio markets, and we cannot say that her services were not worth $18,000 a year. Therefore, we believe that the required evidence to demonstrate that her salary was a gift is absent.

Furthermore, Wright properly reported his spouse's income on his 1979 and 1980 Financial Disclosure Statements [*see* Exhibits E-3, p. 2; E-4, p. 2]; accordingly, we do not believe there is any basis for pursuing the matter further.

On the other hand, we believe that Mrs. Wright's salary from Mallightco from 1981 through 1984 constituted indirect gifts from Mallick to Jim Wright. Mrs. Wright performed few, if any, services for Mallightco, Inc., commensurate with her receipt of an $18,000 annual salary. Mallick has produced no work product created by Mrs. Wright as an employee of Mallightco—no reports, no correspondence, no notes of telephone conversations, no investment analyses.

There is nothing in the record demonstrating that Mrs. Wright was in any way qualified to research and evaluate potential investments. She had no experience, training, or education in the fields of financial counseling or investment analysis. Mrs. Wright had no experience, training or education in any of the industries Mallick said she explored.

Neither Mallick nor Smith could state precisely how many days Mrs. Wright worked in an average month. Smith remembered perhaps a dozen days over a four year period when Mrs. Wright was working on clearly identifiable projects. Despite Mallick's testimony that Mrs. Wright performed valuable services for Mallightco, he was unable to articulate any rational basis for this opinion. His testimony was limited to such vague statements as "she assisted me" and "she advised me." Contrary to Mallick's testimony, Mrs. Wright was Mallightco's only employee; neither he nor Smith drew any salary from Mallightco.

Mallightco invested in none of the investment opportunities Mrs. Wright researched; either she was not adept at selecting good investment opportunities for examination, or Mallick never intended to invest in any of the investment opportunities Mrs. Wright

researched, or the research never occurred in the first place. It is clear Mallightco did not receive services from Mrs. Wright commensurate with the salary paid her.

Mrs. Wright's salary from Mallightco was not a bona fide salary, but rather was a gift indirectly from Mallick to Jim Wright through two intermediaries—Mallightco and Mrs. Wright. Since Mallick is a person with a direct interest in legislation (*see* Section III. E.3.g. of this Report), Wright's acceptance of these gifts from Mallick violated House Rule XLIII, clause 4. Furthermore, Wright inaccurately characterized that money on his financial disclosure forms as spousal income (*see* Exhibits E-5, p. 2; E-6, p. 2; E-7, p. 2; and E-8, p. 2). Special Outside Counsel believes Wright violated House Rule XLIV each year from 1981 through 1984 when he indirectly accepted annual gifts of $18,000 from Mallick without reporting them as such.

d. Wright's Receipt of Housing From Mallick, 1979-1988

(1) The Hulen Place Apartment, 1979-1981

When Mallick hired Mrs. Wright to work for Mallick Properties, Inc. in 1979, he provided her with an apartment at 4212-C Hulen Place in Fort Worth, free of charge. [G. Mallick I Tr. 191-92.] The apartment was located in the Hulen Place Apartments complex, built by Mallick in 1973 and, as of 1979, owned by Marlene Mallick as an individual. [Smith I Tr. 7, 9-10.] Mallick's companies, including Mallick Properties, Inc., were headquartered in the rear of the management office of the Hulen Place Apartments. [G. Mallick I Tr. 188.] Mrs. Wright's apartment was located a mere ten feet from Mallick's office. [G. Mallick I Tr. 191.] The Wrights moved into the apartment at 4212-C Hulen Place, "lock, stock, and barrel." [G. Mallick I Tr. 191.]

Mallick testified extensively on the reasons why he provided the Wrights with a free apartment. Mallick denied that the apartment was part of Betty Wright's compensation package or was a gift. [G. Mallick I Tr. 121, 192.] He testified that he required his employees to live near work for his own convenience. [G. Mallick I Tr. 119-20.] Mallick testified that his employees were more productive if they lived near their jobs. [G. Mallick I Tr. 122.] He believed that having his employees live nearby saved his company time and money by enabling those employees to spend more time working and less time commuting. [G. Mallick I Tr. 122, 133.] At one of the hearings before the Committee, after being sworn to tell the truth and being informed of the penalties for perjury, Mallick gave the following answers to questions regarding his provision of free housing to Mrs. Wright:

Q Did she [Betty Wright] receive anything other than her salary for her services?

A No, she didn't. She received her salary, is what she received.

Q It's been reported that she received as compensation the use of a certain condominium. Is that a true statement?

A I don't—I don't think that's true. I don't think that's correct.

Q Well, I can't understand, when you say, "I don't think it's true." It either is true or it isn't true.

A It's not true.

Q Okay. Have you ever said that she received as compensation for her position at Mallightco the use of a certain condominium?

A I've never said that, no.

Q Has she made that statement?

A I don't know whether she has or not.

Q Have you ever heard it said that she made that statement?

A I've never heard that said.

Q Have you ever heard anyone say that she received the use of this condominium as compensation for her duties at Mallightco?

A I haven't heard anyone say it, no, sir.

Q You've seen it reported, though, haven't you?

A Yes.

Q You don't know what the origin of that is?

A No. There was one newspaper article where I was misquoted as saying that.

[G. Mallick I Tr. 109-110.]

* * *

Q All right. In 1979 the Wrights move in, they move into an apartment, 4212 C, owned by Marlene A. Mallick, and they pay no rent to Marlene A. Mallick, but they do pay what? Heat, light, water?

A No. Those apartments were all master metered.

Q They didn't pay any heat, light or water?

A No. That was included because it was master metered.

Q All right. How about the telephone? Did they pay the telephone?

A Yes, they did.

Q All right. And they didn't pay the taxes?

A No, they didn't.

Q So heat, light, water and taxes were all paid by Marlene A. Mallick?

A That is correct.

Q And all the Wrights paid for was the telephone?

A That is correct.

Q Whatever the value of that was, do you agree with me up to this point, whatever the value of that was, that was not considered by you compensation by Mrs. Wright?

A That is correct.

[G. Mallick I Tr. 191-92.]

Betty Wright was not the only Mallick Properties employee receiving the free use of an apartment. For example, Pamela Smith testified she received free housing from Mallick for many years. [Smith I Tr. 12.] In addition, Mallick testified that he believed his building managers, assistant managers, and maintenance men were more productive if they lived on-site. [G. Mallick I Tr. 122.] However, none of the other employees who received free housing performed the same tasks as Mrs. Wright. For instance, from 1973 to 1978 Pamela Smith was the manager of the Hulen Place Apartments, and she lived in an apartment in that complex. [Smith I Tr. 7, 11-13.] From 1979 to 1980, while Smith lived in a unit at the Park Hill Duplexes, a development across the street from Mallick's Park Ridge Development, she built and managed the Park Hill development for one of Mallick's business associates and supervised the construction of Park Ridge Development Phase III for Mallick. [Smith I Tr. 7-11.] From 1981 to 1983, Smith lived in a condominium at the Indian Creek Condominium complex owned by a member of Mallick's family while managing the construction and leasing of the nearby Hulen Towers office complex. [Smith I Tr. 8, 11.]

It is clear that Mallick did not require his employees to live on-site as a condition of their employment. During 1983, even though she was working closely with Mallick on the Hulen Towers development, Pamela Smith moved out of the Indian Creek condominium and moved to Crowley, Texas, a suburb of Fort Worth. [Smith I Tr. 11.] Smith did not lose her job as a result. [Smith I Tr. 26.]

Mallick further testified that in 1980, the Internal Revenue Service was auditing his companies and an issue was raised whether Mallick's employees had to include as income the value of the free housing they

were receiving from Mallick. [G. Mallick II Tr. 76-78.] Mallick said he and his accountant discussed the matter with the IRS agent, and the agent ultimately decided that the value of the free housing was not taxable income to the employees. [*Id.*] In his discussion with the IRS agent, Mallick did not differentiate among his employees; the IRS believed that all of the Mallick employees were occupying the apartments on a regular basis. [G. Mallick II Tr. 78.] Mallick did not inform the agent that Betty Wright was in Fort Worth only a few days a month. [G. Mallick II Tr. 79.]

Mallick said he told Wright that his companies had been audited and the question of employees' free use of apartments had been raised; he told him that the IRS agent agreed with Mallick's accountant that the value of the free housing was not income to Mallick's employees. [G. Mallick II Tr. 81-82.] Mallick also informed Wright that since Mrs. Wright was an employee of Mallick Properties, Inc., she did not have to report the value of the use of the apartment as income. [G. Mallick II Tr. 83.]

Wright freely admitted that he and his wife lived in an apartment in the Hulen Place Apartments from 1979 to 1981 and paid nothing for the privilege. [Wright Tr. 40.] He testified that when Mrs. Wright worked for Mallick Properties, Inc., Mrs. Wright and he owned a duplex in Fort Worth, but chose not to live there due to inconvenience. [*Id.*] He said he decided to rent out both sides of his duplex and live in hotels when in Fort Worth. [*Id.*] Then "George Mallick said that he would appreciate it if she [Mrs. Wright] would use one of the apartments, as other employees of his company were doing, so as to be available for consultations on the spur of the moment and things of that nature." [Wright Tr. 40.]

Mallick testified that apartments in the same complex similar to the one occupied by the Wrights rented for $239 per month during the period 1979 to 1981. [G. Mallick I Tr. 193.]

(2) The Indian Creek Condominium, 1981-1984

On March 1, 1981, the Mallicks sold the Hulen Place Apartments to an unrelated purchaser for $2,125,000. [Exhibit E-37, p. 4.] As a result, the Mallicks and all of their employees had to move out of the rent-free Hulen Place Apartments. [G. Mallick I Tr. 203.]

Mallick and members of his family purchased six condominiums at the Indian Creek Condominium complex in Fort Worth in September 1981 as alternative living space. [*Id.*] The six units, located at numbers 959, 997, 1067, 1071, 1073, and 1075 Roaring Springs Road, were located approximately a five-minute drive away from the Hulen

Place Apartments. [Exhibit E-66; G. Mallick I Tr. 140.] Mallick asked Mrs. Wright to move into the Indian Creek complex along with the other Mallick employees, and she agreed. [G. Mallick I Tr. 203.] The Wrights moved into 1067 Roaring Springs Road in late 1981. [Exhibit E-65.] They moved all of their possessions into the condominium, and treated it as their own. [G. Mallick I Tr. 111-12.] From December 1981 through the end of 1984, the Wrights paid no rent for their use of that condominium. [G. Mallick I Tr. 112.]

All of the units were purchased on September 14, 1981. [Exhibits E-65, E-66.] The purchase price for unit 959 was $54,178; the purchase price for unit 997 was $68,238; the purchase price for each of the four remaining units was $59,200. [*Id.*; Exhibit E-67, p. 1.] Mallick borrowed $40,000 from Ridglea Bank to finance the purchase of each of the six units. [*See, e.g.*, Exhibit E-67, p. 3.] He listed all six of the condominiums as his assets on the balance sheets of Mallick Company (a sole proprietorship of George and Marlene Mallick) from December 31, 1981 through June 30, 1983. [Exhibits E-37, p. 8; E-38, p. 9; E-39, p. 10.] Mallick also carried the entire $240,000 debt from the purchase of the condominiums on those same balance sheets. [*Id.*]

A summary of the occupancy of the Mallick condominiums is provided in Table E-5.

TABLE E-5

Summary—Occupancy of Mallick's Indian Creek Condominiums

Unit	Purch. Price	Occupant	Date	Sale Price	Date
959	$54,178	Pamela Smith	09/81-08/83		
		Vacant	09/83-12/83	$60,000	12/83
997	68,238	Christopher Mallick	09/81-09/83		
		Vacant	09/83-11/84	75,000	11/84
1067	59,200	The Wrights	12/81-	58,500	04/88
1071	59,200	Angela Mallick	11/81-11/83		
		Vacant	11/83-10/86	50,000	10/86
1073	59,200	Linda Salem	11/81-08/83		
		Larry Shannon	09/83-04/84		
		Stephen Mallick	05/84-	n/a	
1075	59,200	Michael Mallick	09/81-	n/a	

[Exhibits E-65, E-66.]

Mallick paid for all the condominiums, but placed title to the units in various Mallick family members. Unit 1067, the unit occupied by the Wrights, was legally owned by Linda Salem as trustee for the minor Stephen J. Mallick who could not legally hold title to real property under Texas law. [Exhibits E-65; E-67, p. 4; G. Mallick I Tr. 147.] George Mallick personally guaranteed the $40,000 promissory note given the Ridglea Bank to finance the acquisition of Unit 1067. [Exhibit E-67, p. 5.] The promissory note bore interest at the rate of one percent over prime, interest only payable quarterly, for a term of one year. [Exhibit E-67, p. 3.] On August 25, 1982, Linda Salem, trustee for Stephen Mallick, deeded the property and assigned the note to Pamela Smith (then Pamela Trenkle), trustee for Stephen Mallick. [Exhibit E-67, p. 6.] In February 1984, Stephen Mallick purchased Unit 1067 in his own name, and paid off the balance on the note owing to Ridglea Bank. [Exhibits E-65, E-67, p. 7.] Stephen Mallick continued to own that condominium until April 1, 1988, when the unit was sold to the Wrights for $58,500. [Exhibit E-65.]

Despite Mallick's assertions that he gave his employees, including Mrs. Wright, the use of a condominium for his own business purposes,

he denied that he or any of his companies deducted the cost of any of his employees' condominiums as a business expense. [G. Mallick I Tr. 113.] Mallick also denied that the condominium was part of Mrs. Wright's compensation package with Mallightco. [G. Mallick I Tr. 119.] He said the condominium was not a gift because she was working for him and he did not view it as a gift. [G. Mallick I Tr. 228-229.]

When pressed to explain what business purpose existed for Mrs. Wright's free use of a condominium from 1981 to 1984, Mallick was unable to provide a specific explanation. He explained in general terms that Mrs. Wright had to live somewhere when she came to Fort Worth, and that it was convenient for both Mallick and Mrs. Wright for her to stay in the Indian Creek condominium. [G. Mallick I Tr. 142.]

Mallick has no documents which reveal any benefit he or any of his companies received from Betty Wright's occupancy of the Indian Creek condominium. [G. Mallick I Tr. 229-230.]

(3) The Indian Creek Condominium, 1985-1988

As Mallick noted in his memorandum to Mrs. Wright on December 10, 1984 [Exhibit E-64], after Mrs. Wright left Mallightco's employ, she and her husband continued to reside in the condominium at 1067 Roaring Springs Road. [G. Mallick I Tr. 148.] However, they also began to pay Mallick for their use of the condominium. [*Id.*]

According to Mallick, when Wright learned Mrs. Wright was going to stop working for Mallightco, he told Mallick that he would like to start paying rent for the condominium. [G. Mallick I Tr. 150.] Wright told Mallick to set a price, and Mallick decided to charge the Wrights $21.67 for every day they physically occupied the condominium. [G. Mallick I Tr. 148, 150-151.] Mallick arrived at the price by dividing what he considered the monthly fair market rent, $650, by 30, the number of days in an average month. [G. Mallick I Tr. 149.] Mallick denied he was trying to give Wright a lower-than-market price. [G. Mallick Tr. I 149-150.] He said he was holding the condominium for eventual resale, and did not want the unit to be damaged. [G. Mallick I Tr. 155.] He did not offer the Wrights' condominium, or any of the condominiums he owned at Indian Creek, for rent to the general public. [G. Mallick I Tr. 150.] Mallick knew the Wrights would not damage the condominium or misuse it in any way. [G. Mallick I Tr. 155.] Mallick let the Wrights keep their furniture and personal belongings in the condominium at all times "incidental" to their occasional occupancy. [G. Mallick I Tr. 151.]

That way, Mallick could collect at least some rent on the condominium that otherwise would stand vacant.

Wright paid rent to Mallick on an annual basis. [G. Mallick I Tr. 156.] Once a year, Wright's secretary, Kathy Mitchell, would count the number of days he had been in Fort Worth, and have Wright send Mallick a check for the appropriate amount. [G. Mallick I Tr. 156, 296.]

Wright paid Mallick with four checks for the four years 1985 through 1988. [Exhibit E-68.] Mallick never sent a bill to Wright and never questioned the amount he received. [G. Mallick I Tr. 297.] On April 22, 1986, Wright sent Mallick a check for his 1985 rent in the amount of $881.50. [Exhibit E-68, p. 1.] This amount is equivalent to 41 days at $21.50 per day. On August 31, 1987, Wright paid Mallick his 1986 rent, in the amount of $1,711.93. [*Id.*] This amount is equivalent to 79 days at $21.67 per day.[94] On August 1, 1988, Wright paid Mallick his 1987 rent, in the amount of $756. [*Id.*] This amount is the equivalent of 36 days at $21 per day. Finally, on September 12, 1988, Wright sent Mallick a rent check for the period January 1 to March 31, 1988, in the amount of $210. [Exhibit E-68, p. 2.] This amount is the equivalent of 10 days at $21 per day. This payment was made after Mallick's first appearance before the Committee and after Mallick had testified that Wright owed him no rent for the first three months of 1988. [G. Mallick I Tr. 323.]

Wright's per diem arrangement with Mallick continued until March 31, 1988, when Wright purchased the condominium. [*See* Section III. E.3.d(4) of this Report.]

Thus, over a period of 39 months (January 1, 1985—March 31, 1988), Wright paid Mallick a total of $3,559.43 in rent, or approximately $91.27 per month.

(4) Wright's Purchase of the Indian Creek Condominium, 1988

After the Tax Reform Act of 1986 became effective, Mallick and Wright discussed the Act's implications as to them. [G. Mallick I Tr. 158.] They realized that home mortgage interest was one of the few deductions still allowed, even for second homes. [G. Mallick I Tr. 158-159.] Subsequently, in September 1987, Wright and Mallick decided that Wright would buy the Indian Creek condominium in which he and Mrs. Wright were living. [G. Mallick I Tr. 159-160.] The press had been criticizing Wright for his per diem arrangement and he

[94] 1986 was an election year; presumably, that was why Wright stayed in Fort Worth almost twice as many nights as the previous year.

wanted to quell that criticism by buying the condominium. [G. Mallick I Tr. 159-161.]

Mallick and Wright decided they would each obtain an independent appraisal of the value of the property. [G. Mallick I Tr. 161.] They did so in order to establish a sale price without engendering any public criticism. [G. Mallick I Tr. 161.]

Wright hired Wm. Rigg, Inc., a Fort Worth realtor, to perform an appraisal. [Exhibit E-69.] Rigg's appraisal compared the unit at 1067 Roaring Springs Road with four comparable sales from the same complex. [*Id.*, p. 2.] The appraisal noted that the four units sold in the range of $53,500 to $69,000. The appraisal placed the greatest weight on the sale of unit 1069, the unit next door with an identical floor plan. [*Id.*] That unit had been sold on September 30, 1987 for $58,500. [*Id.*] Rigg concluded that the market value of 1067 Roaring Springs Road was $58,000. [*Id.*, p. 1.]

Mallick hired Allen Gartner and Ben Dyess, Jr., to perform a second appraisal of Unit 1067. [Exhibit E-70.] Messrs. Gartner and Dyess compared unit 1067 with three comparable sales. [*Id.*, p. 2.] After adjusting for differences in size, they determined the value of the comparable units ranged from $58,500 to $65,000. [*Id.*] They concluded that the market value of unit 1067 was $64,000. [*Id.*]

Wright purchased the condominium for $58,500. [G. Mallick I Tr. 162.] Mallick chose the sale price, and testified he selected $58,500 because he thought it more accurately reflected the true value of the condominium. [*Id.*] Mallick said that the sale of Unit 1071 to Earlene Biggerstaff for $50,000 in October 1986 convinced him Unit 1067 was worth less than $64,000.[95] [G. Mallick I Tr. 163.] Mallick denied that the sale price was chosen to impart a benefit on Wright or that any benefit was in fact given him. [G. Mallick I Tr. 165.] In fact, Mallick called it a benefit to himself because he was able to sell his condominium and get cash in return. [G. Mallick I Tr. 165.]

Mallick did not discuss the sale of the condominium with his son Stephen, the putative owner of the condominium, until after the appraisals had been conducted. [G. Mallick I Tr. 167.] George Mallick simply presented the sale to Stephen as a *fait accompli*. [*Id.*] Stephen signed the sales contract and the closing papers as instructed. [*Id.*] The proceeds from the sale went to pay off the existing note on the property, with the remainder going to Stephen Mallick. [G. Mallick I Tr. 167-68.] The sale closed on or about April 1, 1988, and the Wrights

[95] Biggerstaff was a business associate of George Mallick. It is not known whether the sale of Unit 1071 was an arms-length transaction or whether $50,000 reflected the real market value of the condominium.

continue to own and occupy the condominium at 1067 Roaring Springs Road to the present. [Exhibit E-65.]

(5) Analysis and Conclusions

The Wrights paid no money to Mallick or any member of his family for their living quarters from 1979 to 1984; therefore, unless Mrs. Wright performed valuable services for Mallick in return for their use of the apartment and condominium, the provision of free housing is a gift.

Determining whether the Wrights' use of the Hulen Place apartment from 1979 to 1981 constituted a gift is quite difficult. Mallick had a practice of providing free housing to some of his employees. That Mallick did so is not surprising, for until 1981 or so, he was primarily in the business of constructing and managing apartment buildings. Such developers frequently require (or allow) their construction and building managers to live on site at the employer's expense. The opinion rendered by the Internal Revenue Service agent is further evidence that Mallick had a reasonable business justification for providing free housing to his employees. Moreover, as stated above, Mrs. Wright was probably a bona fide employee of Mallick Properties, Inc. during 1979 and 1980.

However, during the time she received the free use of the apartment, Mrs. Wright was not a full-time employee of Mallick Properties, Inc. Indeed, Mrs. Wright spent most of her time in Washington, D.C. with her husband and was in Fort Worth only one to two weeks a month. Since Mrs. Wright was unavailable to Mallick when she was in Washington, D.C., Mr. Mallick quite apparently did not "need" Mrs. Wright nearby at all times. If Mallick really needed Mrs. Wright close at hand at all times, he would not have permitted her to live over a thousand miles away in Washington, D.C.

Furthermore, the services Mrs. Wright was providing to Mallick Properties, Inc. were not the kind of services for which on-site housing is required. Unlike Mallick's other employees, Mrs. Wright was not required to perform emergency services on a 24-hour a day basis. She was simply a consultant, helping Mallick Properties, Inc. expand into new cities in the South. She performed market studies of potential Mallick Community cities (Austin and San Antonio) and endeavored to introduce Mallick to important people in those cities. That work must have required her to spend a significant portion of her time in Austin and San Antonio. Services performed in Austin and San Antonio cannot reasonably require the provision of a free apartment in Fort Worth.

We place little weight on the opinion rendered by the IRS agent. Mr. Mallick did not inform the agent that Mrs. Wright worked only part-time. He did not inform the agent the nature of Mrs. Wright's services or that her work involved spending significant amounts of time outside of Fort Worth. Mallick also did not inform the agent that Mrs. Wright worked for Mallick Properties, Inc. while the apartment was owned by Mrs. Mallick. Since an employer may not deduct the cost of housing provided its employees unless the employer owns the living unit, the agent probably would not have found the Wrights' arrangement a bona fide condition of employment had he known all the pertinent information. [Hoeh Tr. 50-53.]

Accordingly, Wright indirectly received a gift from Mallick when he accepted the free use of the Hulen Place apartment from 1979 to 1981. Wright did not report his receipt of the use of the Hulen Place apartment as a gift on his 1979, 1980 or 1981 Financial Disclosure Statements. [Exhibits E-3, E-4, E-5.] For these reasons, we believe violations of House Rule XLIII, clause 4, and House Rule XLIV occurred in 1979, 1980, and 1981 when Wright indirectly accepted free housing worth over $3,300 per year, and when he failed to report the gifts as required.

The Wrights' acceptance of free housing at the Indian Creek Condominium complex from 1981 to 1984, also constituted indirect gifts from Mallick to Wright. The work Mrs. Wright performed for Mallightco was minimal, at most. The nature of Mallightco's business did not require that Mrs. Wright be nearby 24 hours a day. Mallightco's operations from 1981 to 1984 consisted mainly of making a few investments, collecting revenues, and paying bills. There is no evidence Mrs. Wright played any part in collecting revenues and paying bills, while Mallick made the final decisions on making investments. Mrs. Wright merely researched some investments and "advised" Mallick. There is no reason Mrs. Wright had to be in Fort Worth, readily accessible to Mallick, in order to perform these research and advisory tasks. In fact, Mrs. Wright spent most of her time in Washington, D.C. There is also no reason why Mallick needed Mrs. Wright close at hand for consultation on any of the more unusual investments Mrs. Wright researched—Bayrite pigment, Nigerian oil, bulgur wheat cakes, etc. On those rare occasions when Mallick and Mrs. Wright did meet to discuss Mallightco's investments, Mrs. Wright could have easily commuted from wherever she lived in Tarrant County to attend those meetings.

Despite Stephen Mallick's formal ownership of the condominium in which the Wrights lived, it is clear the gift came from George Mallick. He admitted ignoring the trust established on Stephen's

behalf and controlling the use of the condominium himself. Mallick determined who lived in the unit, how much rent the occupant would pay, and whether the unit would be sold.

We believe violations of House Rule XLIII, clause 4, occurred when Wright accepted the use of the condominium without paying for it during 1982, 1983 and 1984. In addition, since Wright did not report his use of the condominium as a gift on his Financial Disclosure Statements from 1982 through 1984 [Exhibits E-6, E-7, E-8], we believe there were violations of House Rule XLIV in 1982, 1983, and 1984.

From 1985 through March 1988, Wright paid Mallick on a per diem basis for the use of the Indian Creek condominium. In fact, the amount Wright paid Mallick was woefully inadequate; thus Wright received a gift from Mallick in the form of a cut-rate price on rent.

Mallick testified that the fair market rental on the Indian Creek Condominium was $650 per month. In light of the value of the condominium (roughly $60,000) and the generally flat nature of the Fort Worth economy over the past four years, we accept Mallick's constant $650 per month figure as correct. Thus, Wright should have paid Mallick $7,800 per year to fully compensate him for the use of the condominium. In fact, Wright never paid Mallick more than $1,711.93 in any calendar year. Over the entire duration of the per diem arrangement, Wright paid Mallick only $3,550 in rent, the equivalent of less than six months fair market rent.

The reason Wright paid so little for the use of the condominium was that Mallick charged Wright on a per diem basis, while Wright had access to the condominium every day of every month. The Wrights moved their personal possessions into the condominium and kept them there whether they were staying in Fort Worth or in Washington, D.C. Mallick did not rent the condominium to other persons when the Wrights were absent. In short, because the condominium was reserved solely for the Wrights, they "occupied" it whether they were physically in Fort Worth or not.

Mallick's offer of the per diem arrangement to Wright was simply a device to make it look like Wright was paying for the use of the condominium. In reality, Mallick was giving a gift to Wright in the form of reduced rent. Whereas the fair market rent for the condominium was $650 per month, Wright paid less than $100 per month. For the per diem arrangement to have been legitimate, Mallick would have had to charge Wright an enormously larger per diem amount. The price Mallick charged, $21.67 per day, was so

meager that the true nature of the per diem arrangement becomes readily apparent.

We believe violations of House Rule XLIII, clause 4, occurred when Wright accepted the use of the condominium without paying the fair market value for such use in 1985, 1986, 1987, and 1988. In addition, since Wright did not report a gift in the form of reduced rent on any of his Financial Disclosure Statements for 1985, 1986, or 1987 [Exhibits E-9, E-10, E-11], we believe there were violations of House Rule XLIV in 1985, 1986, and 1987.

On April 1, 1988, the Wrights purchased the Indian Creek Condominium from Mallick for $58,500. Determining whether this transaction resulted in a gift to Wright requires comparing that purchase price with the fair market value of the condominium on that date. The two appraisals in the record differ by almost ten percent; one was $58,000, and the other was $64,000. Both appraisals compared the Wrights' condominium to recent comparable sales. However, the $58,000 appraisal took into account the sale of 1139 Roaring Springs Road, which sold for $53,500 in December 1986, while the $64,000 appraisal did not.

We believe the purchase price was within the range of reasonable values suggested by the two appraisals. The unit next door to the unit Wright purchased sold for the same price about six months earlier. Wright and Mallick were free to place great weight on this prior arms-length transaction in setting the price for the condominium. We believe that Wright paid a fair price for the condominium and that it was, therefore, not a gift from George Mallick.

e. The 1979 Cadillac Seville

(1) Facts

At the end of 1980, Mallightco obtained a used 1979 Cadillac Seville valued at $10,575 from Marlene Mallick in partial payment of her debt. [Hoeh Tr. 27; Exhibit E-20, p. 8.] George Mallick testified that he bought the car in order to avoid paying the personal holding company surtax. [G. Mallick II Tr. 19.] Mallick said he was advised by his accountants and tax attorneys to create deductible expenses such as salaries and automobile expenses in order to avoid the personal holding company surtax. [G. Mallick II Tr. 19; *see* Exhibit E-71.] Mallick said he followed this advice and acquired an automobile for Mallightco at the end of 1980 and put Mrs. Wright on Mallightco's payroll at the beginning of 1981. [G. Mallick II Tr. 19.]

Mallick testified that he kept the Cadillac in Fort Worth in 1981 and 1982, then sent the car to Washington, D.C. with Mrs. Wright in 1983. [G. Mallick II Tr. 19.] In 1983, Mallightco's records began referring to the Cadillac as Mrs. Wright's car. [*E.g.*, Exhibit E-16, p. 11.] For example, on March 4, 1983, Mallightco paid $111.15 to Capitol Hill Exxon for "repairs BW Cad." [*Id.*] Table E-6 summarizes the automobile expenses paid by Mallightco from 1983 to 1988.

TABLE E-6

Summary of Automobile Expenses
1983-1988

Date	Payee	Purpose	Amount
02/22/83	Alexander & Alexander	Auto Insurance	$1,368.00
02/22/83	Tax Collector	Tags	26.80
03/04/83	Capitol Hill Exxon	Repairs	111.15
07/22/83	American Express	Tires	217.47
10/25/83	Mrs. Wright	Battery	80.03
01/18/84	Tax Collector	Tags	26.80
02/28/84	Lindsay Cadillac	Unknown	247.41
09/14/84	Alexander & Alexander	Auto Insurance	600.00
09/14/84	Capitol Hill Exxon	Unknown	113.37
11/29/84	Alexander & Alexander	Auto Insurance	661.00
03/27/85	Tax Collector	Tags	26.80
04/22/85	Alexander & Alexander	Auto Insurance	1,451.00
03/14/86	Alexander & Alexander	Auto Insurance	1,510.00
02/05/87	Alexander & Alexander	Auto Insurance	1,510.00
07/22/87	Moore Cadillac	Repairs	1,339.02
01/28/88	Alexander & Alexander	Auto Insurance	1,510.00
02/09/88	Tax Collector	Tags	46.80
04/15/88	Alexander & Alexander	Auto Insurance	50.00
		TOTAL =	$10,895.65

[Exhibits E-16, pp. 11-23; E-72.]

Many of these expenses specifically identified the purpose of the expenditure as Mrs. Wright's Cadillac. For example, the payment on July 22, 1983 to American Express for $217.47 was identified as for

"tires for BW Cad." [Exhibit E-16, p. 13.] Additionally, the February 28, 1984 payment of $247.41 to Lindsay Cadillac (a Cadillac dealer in Alexandria, Virginia) was identified as for "BHW's car." [Exhibit E-16, p. 14.]

Table E-6 shows that even after Mrs. Wright left Mallightco's payroll at the end of 1984, she kept the Cadillac in the Washington, D.C. area and Mallightco continued to pay for the insurance, tags, and repairs on the car. [*See also* G. Mallick II Tr. 19-20.]

Mallick explained that an automobile was provided to Mrs. Wright as an officer of Mallightco. [G. Mallick II Tr. 88.] He said his companies owned seven or eight cars and that he provided cars for himself, Pamela Smith, Earlene Biggerstaff, and others in addition to Mrs. Wright. [*Id.*] However, the only person who received an automobile from Mallightco was Mrs. Wright. [*Id.*] Mallick said the Cadillac was reasonably and necessarily related to Mrs. Wright's work for Mallightco because "[f]rom time to time Betty Wright would do tasks for Mallightco in Washington. She would use [the car] in connection with her work for Mallightco." [G. Mallick II Tr. 89.]

Neither George Mallick nor Michael Mallick offered any explanation in their testimony why Mrs. Wright retained the use of the Cadillac after she left Mallightco's payroll.

On February 16, 1989, we received a letter addressed to the Committee from Thomas A. Law, trustee for the James C. Wright Blind Trust, dated February 9, 1989. [Exhibit E-120.][36] In the letter, Law stated:

> [I]t has recently come to my attention that a matter was inadvertently overlooked upon the establishment of the Trust .... Apparently, the Speaker's wife, Betty, as an officer of Mallightco, used an automobile owned by that company. I have been informed that the parties treated this transaction as the loan of the car to Mrs. Wright, to be handled similarly to other loans from Mallightco to its principals. I have been further informed that the parties intended that the automobile be purchased by the Trust at its inception. Unfortunately, due to an oversight, the automobile was overlooked at the Trust's creation and never accounted for.

[Exhibit E-120.]

[36] Thomas A. Law is also S. Gene Payte's attorney and advised Payte how to make a cash contribution to Wright by paying to have Wright's book "updated." *See* Section III. C.3.d.(3)(b) of this Report.

The trustee then went on to explain that the trust purchased the car from Mallightco for $7,050, the value of the car on Mallightco's books as of January 1, 1983, plus interest at seven percent to date. The trustee said the Trust made a cash payment of $10,011. [*Id.*] The trustee also stated that the $120,000 note the Trust held (*see* Section III. E.3.b(5) of this Report) has been reduced $9,302.85, representing the sums Mallightco paid for insurance or repairs to the automobile from January 1, 1983 to date. [Exhibit E-120.]

(2) Analysis and Conclusions

Until February 16, 1989, there was no indication that the Wrights intended to purchase the Cadillac or ever intended to pay for the use of the car. Not until Special Outside Counsel's investigation revealed the existence of the Cadillac, the Wrights' use of it, and Mallightco's payment of its expenses, did Wright make any attempt to repay Mallightco. We find the trustee's letter of February 9, 1989, an ineffective attempt to cover up Wright's violations of House Rules.

The trustee states that the parties treated the transaction as a loan of the car to Mrs. Wright. However, from 1983 to the present, unlike other loans to the Wrights, Mallightco's books and ledgers indicate no account for a loan of a car. Mallightco never accrued interest on any such loan. No witness ever testified that Mrs. Wright "borrowed" the Cadillac from Mallightco. And, the Wrights never made a single payment on the car "loan."

The trustee also states that the parties intended that the Trust purchase the automobile at the Trust's inception in October 1987. This statement appears inconsistent with the previous statement that the parties intended the transaction be a loan. Apparently, this means that the Wrights were to make rental payments from 1983 until October 1987, then the Trust was to buy the car at the then fair market value.

The trustee next states that he has "rectified this situation" by purchasing the car from Mallightco. We fail to understand how the purchase of the car "rectifies" the loan default. If there was a loan, the trust should have cured the loan default by making back rental payments and perhaps paying the 1987 fair market price of the car plus interest. It simply makes no sense that if the Trust was supposed to buy the car in 1987 and is actually buying it in 1989, the Trust is paying the 1983 fair market price, plus interest.

Moreover, a car is not properly an asset of a Blind Trust when the trust beneficiaries, in this case Mr. and Mrs. Wright, are using the car

on a daily basis. Obviously, no disposition of the car could be made without their knowledge or direction.

Finally, the trustee states that the Trust is now paying for all the automobile expenses Mallightco paid over the past six years by reducing the $120,000 note Mallightco owes the Trust. The trustee offers no explanation for the company's payment of these expenses. He does not say that these expenses were "loaned" to the Wrights. The Trust apparently has paid no interest on the amount of the expenses paid. Moreover, the "payment" came from reducing the note which Michael Mallick described as of "minimal" value. [*See* Section III. E.3.b.(6) of this Report.]

Clearly, Mallightco never intended the Wrights would pay anything for the car. Mallightco never expected to receive loan payments from the Wrights, nor did it expect to sell the car to the Wrights. Mallick, through Mallightco, simply gave the Wrights the use of the Cadillac and paid the expenses for the car.

Contrary to the trustee's statement, the original explanation offered by Mallick was that the use of the Cadillac was given to Betty Wright by Mallightco as a benefit of her employment. However, because Betty Wright performed little or no services for Mallightco during 1983 and 1984, and positively no services for Mallightco thereafter, no legitimate business purpose existed for her use of a company car.

Even if Betty Wright's employment with Mallightco were bona fide, no legitimate business purpose was served by providing her with a Cadillac. There is no evidence Betty Wright did any work for Mallightco in the Washington, D.C. area. There is no evidence Betty Wright used the car to attend meetings or to research investment opportunities.

In addition, regardless of the legitimacy of Betty Wright's employment with Mallightco, absolutely no plausible justification exists for her retention of the Cadillac after she stopped working for the company. Neither George Mallick nor Michael Mallick could even articulate a reason why Betty Wright kept the car or why Mallightco kept paying its expenses after she stopped working for the company. We conclude that Mallick simply directed Mallightco to give Betty Wright a gift in the form of all expense paid use of a Cadillac. The Select Committee on Ethics instructs that gifts to a Member's spouse are indirect gifts to the Member, unless the gift is truly independent of the Member. [Advisory Opinion No. 9, Ethics Manual, pp. 170-71.] There is no evidence that Betty Wright received the Cadillac for any reason other than her relationship with Jim Wright. Therefore, the

Cadillac and the payment of automobile expenses were indirect gifts to Jim Wright.

Mrs. Wright has had the use of the car for six years (1983-1988). Determining the value of the use of the car is difficult. Mr. Hoeh described various methods for making that determination. First, value can be determined by multiplying the average cost per mile to operate a similar car under similar conditions times the number of miles driven. While there are several ways to figure the average cost per mile, we do not how many miles Mrs. Wright drove the Cadillac per year. Thus we cannot value the benefit to the Wrights on that basis.

Another method of valuing the use of the car is to ascertain how much it would have cost the Wrights to purchase a used 1979 Cadillac Seville in 1983. This is a reasonable valuation method because as of the end of 1988, the Cadillac was approximately ten years old and had virtually no remaining economic life. In 1983, used 1979 Cadillac Sevilles were being offered for sale in the Washington area at approximately $8,500. [Exhibit E-73.] Thus, spreading the cost of the car over time, the benefit of having the free use of a Cadillac is approximately $1,416 per year ($8,500 divided by six years). To this figure, we must add the automobile expenses Betty Wright did not have to bear because Mallightco paid them. Over the past six years, Betty Wright has also received gifts in the form of automobile expenses of approximately $10,895. [Table E-6.] Thus, the average benefit to the Wrights per year was $3,232.

One final method of estimating the value of Betty Wright's use of the Cadillac is to ascertain how much it would have cost her to lease a 1979 Cadillac in 1983. Since Betty Wright received only the use of the Cadillac, and not title to the Cadillac itself, the arrangement can be analogized to a lease arrangement. It is impossible to determine precisely how much it would have cost her to lease a 1979 Cadillac in 1983 because leases of used cars are quite rare. However, we can estimate the cost of a hypothetical lease of a 1979 Cadillac by ascertaining the cost of leasing a car of similar value. In early January 1983, advertisements in the Washington, D.C. area offered 48-month leases on a new Cutlass Supreme (which sold for approximately $9,200 at the time) at $196.43 per month. [Exhibit E-74, pp. 1-2.] Using these figures, we can roughly estimate that the cost of leasing a similarly priced used Cadillac Seville would have cost between $150 and $200 per month, or between $1,800 and $2,400 per year, not including expenses.

The lowest figure results from assuming Betty Wright purchased the 1979 Cadillac, worth roughly $8,500, in 1983, and spreading that

cost over six years. We believe, therefore, that the use of the 1979 Cadillac was a benefit to Betty Wright in the amount of $1,416 per year for the car, plus yearly expenses incurred and paid for by Mallightco.

Accordingly, Wright indirectly received a gift of the use of a Cadillac worth $1,416 per year from 1983 to 1988, and payment of the car's expenses worth between $1,451 and $2,849 per year. [*See* Table E-7.] Since the indirect source of these gifts was a person with a direct interest in legislation [*see* Section III. E.3.g of this Report], Wright's acceptance of these gifts violated House Rule XLIII, clause 4, each year from 1983 through 1988. In addition, Wright did not disclose on any of his Financial Disclosure Statements from 1983 through 1987 either his acceptance of the use of the Cadillac or his acceptance of Mallick's payment of the Cadillac's expenses. [Exhibits E-7, E-8, E-9, E-10, E-11.] For these reasons, we believe multiple violations of House Rule XLIV occurred each year from 1983 through 1987.

f. BMW Drilling Fund

(1) Facts

The BMW Drilling Fund was a joint venture formed by Ms. Earlene Biggerstaff, Marlene Mallick, and the Wrights for the purpose of investing in Southeastern Resources Corporation's ("SERC") 1981 drilling program. [G. Mallick II Tr. 12.] In early 1981, BMW agreed to invest nearly $200,000 to obtain a 1/16th working interest in 31 oil and gas wells drilled and operated by SERC in Brown County, Texas. [Exhibit E-75.] Investors in SERC's drilling program, such as BMW, paid the costs of drilling, completing, and operating the wells, and received revenues from the sale of any oil and gas produced.

Earlene Biggerstaff contributed $100,000 to BMW; Marlene Mallick contributed $66,000; and the Wrights together contributed $34,567.42. [Exhibit E-76.] Despite the contributions, the ownership of BMW was divided as follows: Earlene Biggerstaff, 60 percent; Marlene Mallick, 20 percent; the Wrights, 20 percent. [Exhibit E-77, pp. 5, 7, 9, 11.] Over the next six years, BMW periodically made contributions to SERC, received revenues from SERC, and made distributions to its partners. [*See* Exhibit E-83.] From 1981 through 1986, BMW provided benefits to its owners in the form of tax deductions and, occasionally, cash dividends. Over the span of six years, BMW passed through to its owners tax losses in the amount of nearly $110,000, which the partners could use to offset their other income. [Exhibits E-77, E-78, E-79, E-80, E-81, E-82.] All of these

tax benefits were distributed to BMW's partners in proportion to their ownership interests. [*Id.*] Thus, Earlene Biggerstaff received 60 percent of these tax losses, Marlene Mallick received 20 percent of these tax losses, and the Wrights received 20 percent of the tax losses.

In addition, BMW occasionally distributed cash dividends to its owners. Over the span of six years, BMW distributed a total of nearly $91,000 in cash to its owners. [Exhibit E-83.] Because the initial capital contributions of the partners were not in the same proportion as their ownership interests, it appears BMW attempted to even out the capital accounts through these cash dividends. Thus, while Biggerstaff received $24,360 in cash from BMW, the Wrights received $9,320 and Mrs. Mallick and other Mallick entities received over $57,000. [*Id.*]

In June 1986, SERC offered to buy out all of its working interest owners. [Exhibit E-84, pp. 1-3.] In a letter dated June 20, 1986, SERC explained to its working interest owners that the dramatic drop in the prices of oil and gas caused many wells to become unprofitable. [*Id.*] It desired to plug and abandon those unprofitable wells; at the same time, SERC wanted to reduce its accounting and record keeping expenses. [*Id.*] SERC offered to buy all of BMW's working interests in all of the wells for $3,392. [*Id.*] BMW accepted the offer, and on October 31, 1986, received a check from Southeastern Resources for $3,392 in return for its entire investment. [Exhibit E-84, pp. 4-5.]

(2) Analysis and Conclusions

The BMW Drilling Fund appears to be a fairly typical tax shelter prevalent in Texas in the early 1980's. At that time, the tax code offered significant tax benefits for oil and gas investments, and limited partnerships to drill for oil and gas became advantageous for many investors. The BMW Drilling Fund does not appear unusual in any significant fashion; it received no special consideration from SERC. There is no indication that Wright's involvement in the fund had any influence on the investments it made, the benefits it reaped or the losses it incurred. Wright apparently received no greater benefit from the BMW Drilling Fund than did its other partners. Therefore, we believe that the money and other benefits Wright earned through the BMW Drilling Fund were not gifts and Wright's participation in the fund violated no law or ethical standard.

g. George A. Mallick's Interest in Legislation Before Congress

(1) Real Estate Developer

George Mallick is a major developer of real estate in and around the Fort Worth, Texas area. As such, he had a significant interest in legislation before the United States Congress. He has had this interest at least since the mid-1960's when he began to develop large commercial properties.

Between 1959 and 1963, Mallick built several hundred single family homes in the Fort Worth area. [G. Mallick I Tr. 12; Exhibit E-85, pp. 4-5.] Between 1963 and 1965, he built a retirement village for the Third Order of St. Francis, in Fort Worth. [G. Mallick I Tr. 12; Exhibit E-85, p. 6.][97] In mid-1960's, Mallick began building commercial office buildings. Around 1965, Mallick built the Summit Building, a three story office building in downtown Fort Worth. [G. Mallick I Tr. 14; Exhibit E-85, p. 7.] Around 1966, he built a 50,000 square foot shopping center in Everman, Texas, a suburb of Fort Worth. [Exhibit E-85, p. 8.] From 1967 to 1970, Mallick constructed the Mallick Tower, a ten story office building in downtown Fort Worth. [G. Mallick I Tr. 15; Exhibit E-85, p. 9.] From 1970 to 1972, Mallick built a 144-unit apartment complex in Everman, Texas. [G. Mallick I Tr. 16-17; Exhibit E-85, p. 12.] In 1971, he began building the Hulen Place Apartments and developing the Mallick Community Concept, described earlier. [Exhibit E-85, p. 13.] Mallick followed the successful completion of the Hulen Place Apartments with the construction in 1974 of the Second Dimension apartment complex in Fort Worth, consisting of 176 apartment units [Exhibit E-85, p. 14], and with the construction between 1976 and 1980 of the three phases of the Park Ridge development in Fort Worth, consisting of 562 apartment units. [Exhibit E-85, pp. 15-16.]

According to Exhibit E-85, by the time Mallick began considering expansion of the Mallick Concept beyond Fort Worth and began investing with Wright, Mallick had built real estate development projects worth in excess of $35.8 million.

In the early 1980's, Mallick changed his business focus. He withdrew from the residential apartment construction business and began building large-scale commercial office structures. In March 1981, Mallick sold the Hulen Place Apartments complex to an unre-

[97] Mallick's construction of the retirement center was partially subsidized or underwritten by federal housing agencies. These federal agencies enabled Mallick to obtain below market interest rates.

lated party for approximately $2,125,000. [Exhibit E-37, p. 4.] Mallick sold the Park Ridge development for an unknown amount to an unknown party at the end of 1980. [Exhibit E-36, p. 5.] All we know is that by December 31, 1981, the Mallick Company owed nothing on the Park Ridge development and held a note for $560,000 from National Union Fire Insurance Company secured by a second lien on Park Ridge Phases I and II. [Exhibit E-37, pp. 4, 11.] By April 1981, the only real estate assets the Mallick Company held were two condominiums in New York City, the Mallicks' personal residence in Fort Worth, two parcels of undeveloped residential land in Fort Worth, and nearly 300,000 square feet of undeveloped commercial land in Fort Worth. [Exhibit E-36, pp. 7-8.]

In 1981, Mallick began construction on the Hulen Towers office complex. The complex was originally designed to contain three six-story office buildings [Exhibit E-86, pp. 6, 9], but was later modified to include two six-story office buildings and a retail center. [Exhibit E-87.] Each Tower had 70,000 square feet of office space, and the Retail Center had 30,000 square feet of retail space. [*Id.*] The Hulen Towers South, the first of the three structures to be built, was completed by the end of 1983. [*See* Exhibit E-88.] An appraisal valued the Hulen Towers South property at $7,350,000 as of the end of 1983. [*See* Exhibit E-86, p. 3.]

Construction of the Hulen Towers North proceeded rapidly, and was completed by mid- or late-1985. [Exhibit E-41, p. 1.] On June 30, 1985, Mallick valued each of the Hulen Towers at $8.0 million. [*Id.*] Subsequent appraisals valued the Hulen Towers North at significantly less, however. An appraisal of the Hulen Towers North in June 1987, referred to an appraisal performed in July 1986, which valued the property at $6.79 million. [Exhibit E-89, p. 1.] The 1987 appraisal valued the Hulen Towers North at $5.9 million. [*Id.*] The Hulen Towers North had few tenants, although one of them was the "Wright Congressional." [Exhibit E-90.] The Wright Congressional Club paid rent at a rate significantly less than that paid by the other tenants. [*Id.*][98]

[98] The Wright Congressional Club paid base rent of $435 per month for 625 square feet of office space on the sixth floor of the Hulen Towers North, or approximately $0.70 per square foot per month. The other paying tenants on the sixth floor paid between $1.18 and $1.40 per square foot per month. [Exhibit E-90.] This arrangement appears to be an in-kind campaign contribution from Mallick to the Wright Congressional Club of roughly $300 per month, or $7,200 over a two-year election cycle. This arrangement thus appears to violate the contribution limits in the Federal Election Campaign Act, 2 U.S.C. § 441a(a)(1)(A), and the reporting requirements contained therein. 2 U.S.C. § 434(b)(3).

Mallick then proceeded to build the Hulen Towers retail center. Mallick apparently completed the Retail Center by the end of 1986, at which time he valued the property at $4.2 million. [Exhibit E-43, p. 1.]

In addition to the $20 million Hulen Towers development, Mallick was also involved with other members of his family in developing real estate in the Fort Worth area. Michael and Stephen Mallick's corporation, the Mallick Organization, Inc., constructed a 23,000 square foot shopping center in Benbrook, Texas, in 1985 and 1986. [M. Mallick Tr. 8.] The shopping center, known as the River Pointe Plaza, cost approximately $2,175,000 to build and was financed through Interwest Savings Association of Fort Worth, Texas. [*See* Exhibit E-91, p. 1.] Although the Mallick Organization, Inc. was the formal developer of River Pointe Plaza, the Mallicks were involved with the project as guarantors on the construction finance loan Michael Mallick had obtained. [Exhibit E-92.]

(2) Oil and Gas Investor

George Mallick has invested substantial sums of money in oil and gas ventures. He is one of the principals of the Mallick Family Drilling Fund ("MFDF"), an entity used by the Mallick family to fund oil and gas drilling ventures. The MFDF has invested in at least one of the drilling programs organized by SERC. [Exhibit E-41, pp. 5-6.] Mallick also invested in the BMW Drilling Fund, an entity which invested in one of SERC's drilling programs. [*See* Section III. E.3.f of this Report.] In addition, Mr. and Mrs. Mallick invested in oil and gas ventures on their own behalf. [*E.g.*, Exhibit E-36, p. 6.]

At one point, the value of the Mallicks' investments in oil and gas ventures was as high as $1,457,000. [*See* Exhibit E-38, pp. 6-7.] During 1986, the Mallicks disposed of all their oil and gas interests. [*Compare* Exhibit E-42, pp. 7-8 *with* Exhibit E-43.]

(3) The Fort Worth Stockyards Project

Around the turn of the century, Fort Worth became a major meat packing and processing center. [Exhibit E-93, p. 2.] The Swift and Armour companies opened huge slaughterhouse and meat packing plants on Fort Worth's north side. [*Id.*] For sixty years, the stockyards were one of Fort Worth's dominant industries, justifying Fort Worth's "cowtown" moniker. However, as the cattle industry decentralized with the development of new feedlots and packing houses, the Fort Worth stockyards became obsolete. [*Id.*] In 1962, Armour closed its Fort Worth plant. [*Id.*] Swift followed in 1971.

[*Id.*] The stockyards were abandoned, jobs were lost, and the north side of Fort Worth became a very impoverished area. [Exhibit E-94, p. 5.]

Wright became interested in infusing new economic life into the area, which is within his congressional district. [Lynam Tr. 81.] As a member of the House Public Works Committee in the early 1970's, Wright traveled to Chicago and saw what benefits had accrued from Federal redevelopment monies there. [*Id.*] Wright began working with Fort Worth city officials to secure similar economic aid for the Fort Worth stockyards area. [*Id.*]

As early as 1974, Wright was successful in obtaining Economic Development Administration ("EDA") grants for the stockyards region. [Exhibit E-95.] Throughout the 1970's and early 1980's, Wright obtained numerous EDA grants for constructing or improving stockyards infrastructure, totalling approximately $7,000,000. [*Id.*] Wright was instrumental in obtaining funds for paving and building new roads, building a new police station, constructing a bridge over Marine Creek, beautifying Marine Creek, building bicycle trails and pedestrian walkways, and renovating and cleaning key structures in the stockyards area. [*Id.*]

In the late 1970's, tourist and entertainment related retailers began to occupy renovated buildings in the stockyards area. In 1981, Billy Bob Barnett, a former professional football player and beer distributor, opened Billy Bob's Texas. [Exhibits E-94, p. 22; E-96, p. 7.] Styled as the world's largest nightclub, Billy Bob's Texas occupied a building which had been a discount department store, and previously a cattle holding area. [Lynam Tr. 82.] Other renovated buildings in the stockyards included the city-owned Cowtown Coliseum, the Livestock Exchange Building, and a rebuilt authentic-looking western street with saloons, shops, etc. [Exhibit E-96, pp. 15-16.]

In 1983, a corporation owned by Billy Bob Barnett, Wayne Newton, William Beuck, Steve Murrin, Don Jury and others, named C & I Inc. ("Cowboys & Indians") formed a joint venture with the City of Fort Worth to continue the restoration and preservation of the stockyards with private and public funds. [Exhibit E-94, pp. 28-30.] The venture sought to obtain a $5 million Urban Development Action Grant ("UDAG") from the United States Department of Housing and Urban Development as "seed money" for a $32.5 million redevelopment plan.[99] [*Id.*, p. 2.] The UDAG grant sought by Fort Worth was

[99] A UDAG grant is awarded to a municipality which then lends the money to private investors; those investors must repay the loan from the municipality.

to be spent on upgrading the Cowtown Coliseum and for general lighting, security, landscaping, signs, and streets. [*Id.*, pp. 8-9.] The $27.5 million in private funds were earmarked for renovation of additional buildings, construction of restaurants, shops, and recreational areas, building a railroad museum, renovation of the horse and mule barns and livestock pens, completion of an outdoor amphitheater, and the development of a turn of-the-century county fair. [*Id.*]

Despite Wright's personal appeal to HUD Secretary Samuel Pierce for approval of the UDAG grant, HUD denied Fort Worth's application in the first round of funding at the end of 1983. [Exhibit E-97.] Fort Worth re-submitted its application for the round of funding in the first quarter of 1984, and Wright enlisted the aid of Senator Paul Laxalt (R-Nev.) in writing to Secretary Pierce in support of the grant. [Exhibits E-98, E-99.] Fort Worth's application was eventually approved in part in September 1984 in the form of an EDA grant for $600,000. [*See* Exhibit E-95.] That money was earmarked for Phase I of the conversion of North Commerce Street to a pedestrian mall. [*Id.*] EDA supplemented that grant with another $600,000 grant in October 1985. [*Id.*]

Wright also worked hard to obtain funds for the stockyards directly from Congress. On December 19, 1985, Congress approved and the President signed into law a bill making further continuing appropriations for fiscal year 1985, Pub. L. 99-190, 99 Stat. 1185. [Exhibit E-100.] Section 108(c) of that law appropriated "for the Economic Development Administration, 'Economic development assistance programs'; $8,500,000, to remain available until expended—of which $4,500,000 is for a grant to the City of Fort Worth for the continued renovation, construction, rehabilitation and establishment of economic development facilities and related infrastructure activities of the Fort Worth Stockyards project." [99 Stat. 1317; Exhibit E-100, p. 2.]

Throughout 1985 and 1986, Billy Bob Barnett, William Beuck, and others continued the renovation and restoration of the stockyards under the auspices of an entity known as Stockyards '85. Along with other entities (*e.g.*, Triad Corp.; Stockyards South, Inc.; Stockyards Investments, Inc.), Stockyards '85 used the EDA grant to renovate the Cowtown Coliseum, build the Brown Derby restaurant, and construct a pedestrian walkway. [Exhibit E-101.]

However, Stockyards '85 ran into financial difficulties in mid-1986. Cost overruns, poor management, and decreased revenues put the stockyards developers $2 million in debt. [G. Mallick II Tr. 137-39.] Construction contractors had filed liens against the development

totalling approximately $2 million. [G. Mallick II Tr. 139.] In August 1986, William Beuck visited George Mallick in search of a competent developer to take over operations of the stockyards project. Beuck told Mallick the stockyards needed a developer who could help them out of the existing situation and who had resources to obtain financing for future development. [G. Mallick II Tr. 134-35.] Beuck came to Mallick because he knew that Mallick had assisted a number of workout situations in the past, and he knew that Mallick had successfully raised funds from sources outside of Fort Worth for other developments in the past. [G. Mallick II Tr. 138.]

Following that initial contact, Mallick and Pamela Smith met with the three principals of Stockyards '85—William Beuck, Billy Bob Barnett, and Don Jury. [G. Mallick II Tr. 138-39.] The venture's books and records were in a shambles; the development had no executive management. [G. Mallick II Tr. 139.] The principals told Mallick they were thinking about filing a petition for reorganization under Chapter 11 of the Bankruptcy Code. [*Id.*] Mallick introduced Stockyards '85 to Henry Simon, Mallick's attorney and a Fort Worth bankruptcy specialist. [G. Mallick II Tr. 140.]

Simon proposed a plan which might enable the stockyards project to survive. The developers needed to bring in competent management immediately to manage the ongoing business; they needed to raise short-term funds to make arrangements with their creditors and they needed to raise long-term funds to restructure their existing debts and provide working capital for future development. [G. Mallick II Tr. 140.] Simon's proposal required $750,000 to $1 million in short-term funds and $27 million in long-term funds. [G. Mallick II Tr. 140-41.]

After considering Simon's proposal, Barnett and Mallick designed a financial and management plan to get the stockyards project back on its feet. [G. Mallick II Tr. 142.] They agreed that Barnett would obtain options from all of the persons owning interests in Stockyards Investments, Inc., Stockyards South, Inc., and Triad Corp., thereby giving Barnett the right to purchase all of their common stock in those corporations.[100] Those options, if exercised, would give Barnett ownership of all the beneficial interest in Stockyards '85. [Exhibit E-103, p. 1.] Barnett planned to pay for the costs of exercising the options with financing obtained by Mallick. [*Id.*, p. 2.] Mallick and Barnett also planned to form a new corporation named Fort Worth Stockyards Corporation. If Mallick successfully obtained the financing for Barnett, Barnett would exercise the options and convey the

[100] Mr. Barnett successfully obtained these purchase options. [*See, e.g.*, Exhibit E-102.]

beneficial interests obtained thereby to the Fort Worth Stockyards Corporation. [*Id.*, p. 3.] In return for obtaining the financing, Mallick would take executive and directory control of the stockyards project and receive 17 percent of the capital shares of Fort Worth Stockyards Corporation. [*Id.*, pp. 2-3.]

The entire Mallick family was to be involved in the stockyards renovation project as officers of the Fort Worth Stockyards Corporation. [Exhibit E-104.] Christopher Mallick became CEO and Chief Operating Officer; Michelle Mallick became Corporate Treasurer and Chief Financial Officer; Michael Mallick became vice president in charge of construction, Stephen Mallick became vice president in charge of operational coordination; and Angela Mallick took over aesthetic aspects of the operation. [*Id.*, Exhibit E-103, p. 4.] In addition, Pamela Smith became the Corporate Secretary. [Exhibit E-103, p. 4.] The other officers of the newly-formed Fort Worth Stockyards Corporation were to be Billy Bob Barnett, President and Chairman of the Board and William Beuck, Senior Vice President. [*Id.*, p. 4.]

Stockyards '85 had a parcel of land it wished to sell to obtain needed short-term funds. [M. Mallick Tr. 97.] In November 1986, Michael Mallick was asked if he could help locate a buyer for the land. [*Id.*] He was successful, and the parcel was sold for approximately $2.5 million. [G. Mallick II Tr. 143.] Michael Mallick received a $17,500 commission on this sale. [M. Mallick Tr. 98; Exhibit E-105, p. 1.] Then in December 1986, Michael Mallick and his corporation, The Mallick Organization, Inc., were employed by Stockyards '85 to negotiate with its construction and trade contractors. [M. Mallick Tr. 97.] Throughout the end of 1986 and early 1987, Michael Mallick worked out payment plans with the creditors of Stockyards '85 to forestall litigation or foreclosure on liens. [M. Mallick Tr. 100.] Michael Mallick's involvement with the stockyards project ended in March or April 1987. [M. Mallick Tr. 101.] Michael Mallick was paid approximately $24,000 for his labors by Billy Bob's Texas, Inc. in 1987. [Exhibit E-105, p. 2.]

Unfortunately, Mallick was unable to secure the $27 million long-term financing necessary for Barnett to exercise the purchase options. [G. Mallick II Tr. 146.] Mallick testified that he contacted Drexel, Burnham, Lambert & Co. and Morgan, Stanley, Inc., but neither was willing to provide financing for the stockyards project. [G. Mallick II Tr. 147, 156.] He said they did not invest in the project because it was burdened with too much debt and there was little interest in investing in Texas at the time. [G. Mallick II Tr. 147.] Mallick did not seek financing for the stockyards project from

savings and loans or banks in the Fort Worth area. [G. Mallick II Tr. 155.]

As a result of Mallick's inability to secure long-term financing for the stockyards project, Stockyards '85 went into bankruptcy and the entertainment areas of the stockyards area, including Billy Bob's Texas, were closed. [G. Mallick II Tr. 156.] The Fort Worth Stockyards Corporation never became active, and George Mallick's involvements in the stockyards project ended in the middle of February 1987. [G. Mallick II Tr. 154.]

At the same time George and Michael Mallick were dealing with Barnett, seeking financing for the stockyards development, and negotiating with trade creditors, Wright was working with Congress to obtain public funds for the stockyards project. On October 17, 1986, the President signed into law a joint resolution making continuing appropriations for fiscal year 1987. Pub. L. 99-591, 100 Stat. 3341. [Exhibit E-106.] That law appropriated for the Economic Development Administration "notwithstanding any other provision of this Joint Resolution, for additional amounts for 'Economic development assistance programs' . . . $7,500,000, to remain available until expended, for a grant to continue economic development facilities and related infrastructure activities of the Fort Worth Stockyards Project at full Federal expense: *Provided*, that in addition, the Secretary of the Army, acting through the Chief of Engineers, using any funds heretofore, herein, and hereafter available to the Corps of Engineers, is authorized and directed to develop at full Federal expense detailed plans and specifications and to construct measures in Tarrant County, Texas, to eliminate flood damage in the historial stockyards area along Tony's Creek and Marine Creek." 100 Stat. 3341-345 to 3341-346. [Exhibit E-106, pp. 2-3.]

At roughly the same time, Congress also passed the Water Resources Development Act of 1986. [Pub. L. 99-662, 100 Stat. 4082 (November 17, 1986); Exhibit E-107.] Section 401(e)(5) of the Water Resources Development Act provided that "[t]he Secretary [of the Army] is authorized and directed to develop detailed plans and specifications and to construct measures in Tarrant County, Texas, to eliminate flood damage in the historical stockyards along Tony's Creek and Marine Creek, at a total cost of $20,000,000, with an estimated first Federal cost of $15,000,000, and an estimated first non-Federal cost of $5,000,000. The non-Federal share of the cost of the project authorized by this section shall be 25 percent." [100 Stat. 4133; Exhibit E-107, p. 2.]

Mallick testified that at the time of his involvement in the stockyards redevelopment project he had only general knowledge of the 1985 Federal EDA appropriation. [G. Mallick II Tr. 148.] He denied talking with Wright about pending legislation affecting the stockyards while he was involved in the stockyard project. [G. Mallick II Tr. 150.] Mallick stated that Wright learned of Mallick's involvement in the stockyards project at the end of 1986 when Wright attended a meeting of community leaders at which an outline of future development was presented. [G. Mallick II Tr. 150-51.] Wright told Mallick "it looked like a good idea" and he hoped it would work. [G. Mallick II Tr. 151.] Mallick said that they discussed nothing about any pending legislation concerning the stockyards. [G. Mallick II Tr. 151.] Mallick testified that Beuck and Barnett informed him of the $7.5 million and $15 million Congressional grants at a later date. [G. Mallick II Tr. 151-53.]

Michael Mallick testified that he learned of Federal appropriations for the stockyards project in 1987 after he was no longer involved with the project. [M. Mallick Tr. 105.]

(4) Mallick's Involvements With Banks and Savings and Loans

Most of the financing for Mallick's real estate developments came from the Ridglea Bank (later the RepublicBank Ridglea, and later still, NCNB-Texas) in Fort Worth. [*See, e.g.*, Exhibit E-39, p. 13.] At the beginning of 1984, when the Hulen Towers South was recently completed, Mallick owed the RepublicBank Ridglea approximately $5.2 million. [Exhibit E-108, p. 1.] On January 31, 1984, Mallick applied for a $6 million loan from Homestead Savings and Loan Association of Burlingame, California to pay off the construction loan from RepublicBank Ridglea and to provide money for finishing expenses and to cover early operating shortfalls. [*Id.*] Homestead Savings and Loan agreed to lend Mallick the money he requested. [Exhibits E-40, p. 11; E-41, p. 10.]

By November 1985, Mallick was in default on the loan from Homestead Savings and Loan. [Exhibit E-109.] Mallick had failed to renew a letter of credit in favor of Homestead, as required by the terms of his loan, and had failed to make his most recent payment in the amount of $22,795.70. [*Id.*] Homestead demanded that Mallick bring the loan current, renew the letter of credit, or provide satisfactory substitute collateral; otherwise, Homestead threatened to foreclose the loan and sell the property. [*Id.*] Mallick informed Homestead that he was selling the property to a third party who would assume his obligations on the loan. [Exhibit E-110.] Home-

stead agreed to defer foreclosing on the loan until after the sale occurred. [Exhibit E-111.] Mallick sold the Hulen Towers South on December 20, 1985, and freed himself of the obligation to Homestead Savings and Loan. [Exhibit E-42, p. 6.]

By the end of 1985, Mallick had completed the Hulen Towers North. [*Id.*, p. 2.] By the end of 1986, Mallick had also completed the Hulen Retail Center. [Exhibit E-43, p. 1.] The construction of both of these projects was financed through RepublicBank Ridglea. [*Id.*, p. 7.] As of December 31, 1986, Mallick owed RepublicBank Ridglea $9.5 million in principal on these projects. [*Id.*] In addition, Mallick owed RepublicBank Ridglea another $500,000 on a variety of other loans. [Exhibit E-112, p. 3.] Altogether, as of January 6, 1988, Mallick owed RepublicBank Ridglea $11,257,000 in principal and interest. [*Id.*]

Mallick failed to pay the interest installments on his loans that were due in May, August, and November 1987. [*Id.*, p. 1.] On January 6, 1988, RepublicBank Ridglea notified Mallick that it intended to foreclose on the loans and sell the Hulen Towers North, the Hulen Towers Retail Center, and a residential lot in Westover Hills in February, 1988. [*Id.*, p. 2.] Mallick failed to cure the defaults [Exhibit E-113], and on February 2, 1988, RepublicBank Ridglea sold the Hulen Towers properties at a foreclosure sale. [Exhibits E-114, E-115.] RepublicBank Ridglea was the highest bidder at the sales, and it acquired the Hulen Towers North for $3 million [Exhibit E-114, p. 3] and the Hulen Towers Retail Center for $2,411,700. [Exhibit E-115, p. 3.]

Michael Mallick encountered similar financial difficulties with his River Pointe Plaza project. Michael Mallick, through his corporation Mallick Organization, Inc. borrowed $2,175,000 from Interwest Savings Association of Fort Worth, Texas in June 1985.[101] [M. Mallick Tr. 20; Exhibit E-116.] Michael Mallick, George Mallick, and Marlene Mallick each personally guaranteed the Mallick Organization, Inc.'s liability. [M. Mallick Tr. 110; Exhibit E-92.]

The River Pointe Plaza was constructed as designed, but failed to become economically viable. [M. Mallick Tr. 109.] Michael Mallick testified that one of his tenants was in the oil business and had

[101] On November 19, 1985, Interwest was placed under a Federal Supervisory Agreement. On April 1, 1986, W. Glenn Ragle, Interwest's President and Director, resigned at the direction of Federal regulators. At about the same time, Interwest's other directors resigned in sympathy with Ragle. In June 1986, Interwest's officers were removed from office and, along with its former directors, prohibited from working or having anything to do with Interwest. In October 1988, Interwest was placed under state conservatorship. In December 1988, Interwest was placed under federal conservatorship.

financial problems. [M. Mallick Tr. 24.] As a result, the River Pointe Plaza had defaulted on its loans by August 1987. [Exhibit E-117, pp. 1-2.][102] At that time, Interwest agreed not to foreclose on the property until September 1, 1987 to give Michael Mallick time to sell the property. [*Id.*]

However, Michael Mallick failed to cure the default, and in September 1987, Interwest notified him that it was going to sell the property at a foreclosure sale in October, 1987. [Exhibit E-117, pp. 3-4.] On October 6, 1987, Interwest Savings purchased the property at the foreclosure sale for $1,280,000. [M. Mallick Tr. 108; Exhibit E-118, p. 3.] Interwest then filed a deficiency judgment lawsuit against the Mallick Organization, Inc. and the three individual Mallicks as guarantors; the Mallicks countersued Interwest, claiming Interwest paid a grossly inadequate sum for the property at the foreclosure sale. [M. Mallick Tr. 23-24.] That lawsuit is still pending. [*Id.*]

In late 1986, Wright asked Mallick to conduct an investigation and prepare a report concerning the savings and loan crisis in Texas.[103] Mallick enlisted the aid of Michael Mallick. During the last few months of 1986 and first few months of 1987, they interviewed officers of savings and loan institutions, government officials and other interested persons. In February 1987, George and Michael Mallick presented their report to Wright. [Exhibit E-119.] They concluded that the Federal Home Loan Bank Board officials in District Nine, which includes Texas, were treating Texas savings and loans capriciously and arbitrarily. Mallick recommended that Congress pass legislation providing the Federal Savings and Loan Insurance Corporation with $25 billion for recapitalization; the Mallick report recommended that the use of these funds be closely monitored by Congress. He further recommended that legislation be enacted recognizing distressed economic areas, utilizing accounting and appraisal methods helpful to ailing savings and loans, revising asset classification rules, altering net worth requirements, prohibiting red-lining and establishing a system for reviewing regulatory decisions. Mallick also recommended that the Federal Home Loan Bank Board and savings and loans refrain from foreclosing on loans in default, in expectation of better economic times ahead.

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[102] It is unknown precisely when the Mallicks realized they would default. George Mallick has said he knew as early as the early part of 1986 that the shopping center was in financial difficulties. [Exhibit E-133, p. 14.] However, during his testimony before the Committee, Mallick stated that his testimony in the deposition he gave in the *Mallick Organization v. Interwest Savings* lawsuit (Exhibit E-133) was incorrect. He testified he did not learn of financial problems with River Pointe Plaza until May 25, 1987. [G. Mallick III Tr. 124.]

[103] Further details of Mallick's involvement as an advisor to Wright on the savings and loans problems are provided in Section III. F. of this Report.

(5) Analysis and Conclusions

House Rule XLIII, clause 4, prohibits Members of Congress from accepting gifts valued at $100 or more from any person "having a direct interest in legislation before the Congress." Mallick gave numerous gifts to Wright and his wife; therefore, Wright violated Rule XLIII if Mallick had a direct interest in legislation before the Congress.

Determining who has a "direct interest in legislation before the Congress" is not always an easy task. Some entities who give gifts to Members clearly have a direct interest in legislation before the Congress—lobbyists, major corporations, large labor unions and companies in regulated industries. At the same time, some persons and entities clearly do not have a direct interest in legislation before the Congress, even though legislation affects their lives—ordinary taxpayers, small family farmers, students, and "mom-and-pop" businesses. In between, there is a large gray area where one slowly shades from "not directly interested" to "directly interested." For example, at some point, a family farmer owns enough land and grows enough crops to become a large agribusiness with a direct interest in federal legislation regarding crop price supports, water projects, international grain agreements, and so on.

No single bright line can be drawn for all persons in all circumstances. The Select Committee on Ethics urged Members to be wary of accepting gifts from all sources.

> [W]hile individuals often receive gifts from non-relatives, and occasionally from organizations, it is rare that such gifts are valued at more than $100. Therefore, unless such a gift is from a close personal friend, it is likely offered because of the Member's position as a United States Representative.

[Select Committee on Ethics, Advisory Opinion 10, Ethics Manual, p. 173.]

Mallick was at all times relevant to this inquiry not only Wright's close personal friend and campaign advisor, but also a person with a direct interest in legislation before the Congress. Over the course of ten years (1979 to 1988), Mallick has been involved in the acquisition, planning, construction, or sale of real estate properties worth over $160 million. The sheer magnitude of Mallick's real estate business sets him apart from the general public. The manner in which Mallick financed his development projects gave him further interests in federal legislation. Most of Mallick's development projects were

highly leveraged. His Hulen Towers and Retail Center project was encumbered with over $15 million in debt; that debt burden ultimately forced him to sell one building and allow the others to be sold at foreclosure. The River Pointe Plaza project was encumbered with over $2 million in debt; that debt ultimately subjected Mallick to foreclosure and a million dollar lawsuit.

Furthermore, Mallick thrust himself into roles inevitably intertwining himself with Congressional legislation. Mallick agreed to participate in the redevelopment of the Stockyards, which had a long history of federal funding and public interest. In that role, he unavoidably became interested in the fate of pending or potential appropriations bills. Any money appropriated by Congress would ease his own fund-raising efforts. Moreover, Mallick thrust himself into potentially one of the most serious public issues of recent years when he agreed to advise Wright on the savings and loan crisis.

Mallick obviously was deeply interested in the value of Fort Worth real estate and the state of the Fort Worth economy. Matters pending before Congress could have had an enormous impact on Fort Worth real estate and its economy in general. As a result, Mallick was interested in legislation affecting taxation of real estate, interest rates, the oil and gas industries, and so forth. All of these facts compel the conclusion that Mallick had "a direct interest in legislation before the Congress," as that phrase is used in House Rule XLIII, clause 4.

House Rule XLIII, clause 4, excludes from the prohibition on the receipt of gifts those gifts of personal hospitality and those worth less than $50.[104] None of the gifts Wright accepted from Mallick were personal hospitality; some of the interest rate gifts and automobile expenses were less than $35 or $50. These are excluded from the following summary of violations, summarizing Wright's violations of House Rule XLIII, clause 4, and House Rule XLIV.

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[104] Until January 6, 1987, the Rule only excluded gifts valued at less than $35. H. Res. 5, 100th Cong., 1st Sess.

TABLE E-7

SUMMARY OF WRIGHT'S VIOLATIONS

Gift	Value of Gift
1979	
Free Housing	$ 2,151
1. Violation of Rule XLIII, clause 4	
2. Violation of Rule XLIV	
1980	
Free Housing	$ 2,868
3. Violation of Rule XLIII, clause 4	
4. Violation of Rule XLIV	
Marlene Mallick's Loan Services	Unknown
5. Violation of Rule XLIII, clause 4	
6. Violation of Rule XLIV	
1981	
Free Housing	$ 3,279
7. Violation of Rule XLIII, clause 4	
8. Violation of Rule XLIV	
Cash in the Form of Salary	$ 18,000
9. Violation of Rule XLIII, clause 4	
10. Violation of Rule XLIV	
Reduced Rate of Interest:	
—90 day note at 17 percent dated 4/10/81	$ 647
11. Violation of Rule XLIII, clause 4	
—69 day note at 20.5 percent dated 7/9/81	$ 992
12. Violation of Rule XLIII, clause 4	
—90 day note at 20 percent dated 9/16/81	$ 1,201
13. Violation of Rule XLIII, clause 4	
—90 day note at 16.75 percent dated 12/14/81	$ 600
14. Violation of Rule XLIII, clause 4	
15. Violation of Rule XLIV	
1982	
Free Housing	$ 7,800
16. Violation of Rule XLIII, clause 4	
17. Violation of Rule XLIV	
Cash in the Form of Salary	$ 18,000
18. Violation of Rule XLIII, clause 4	
19. Violation of Rule XLIV	

TABLE E-7

SUMMARY OF WRIGHT'S VIOLATIONS

Gift	Value of Gift
Reduced Rate of Interest:	
—90 day note at 17.5 percent dated 3/15/82	$ 713
20. Violation of Rule XLIII, clause 4	
—90 day note at 17.5 percent dated 6/14/82	$ 677
21. Violation of Rule XLIII, clause 4	
—90 day note at 14.5 percent dated 9/13/82	$ 168
22. Violation of Rule XLIII, clause 4	
23. Violation of Rule XLIV	
1983	
Free Housing	$ 7,800
24. Violation of Rule XLIII, clause 4	
25. Violation of Rule XLIV	
Cash in the Form of Salary	$ 18,000
26. Violation of Rule XLIII, clause 4	
27. Violation of Rule XLIV	
Use of an Automobile	$ 1,416
28. Violation of Rule XLIII, clause 4	
29. Violation of Rule XLIV	
Automobile Expense	$ 1,803
30. Violation of Rule XLIII, clause 4	
31. Violation of Rule XLIV	
1984	
Free Housing	$ 7,800
32. Violation of Rule XLIII, clause 4	
33. Violation of Rule XLIV	
Cash in the Form of Salary	$ 18,000
34. Violation of Rule XLIII, clause 4	
35. Violation of Rule XLIV	
Use of an Automobile	$ 1,416
36. Violation of Rule XLIII, clause 4	
37. Violation of Rule XLIV	
Automobile Expenses	$ 1,622
38. Violation of Rule XLIII, clause 4	
39. Violation of Rule XLIV	

TABLE E-7

SUMMARY OF WRIGHT'S VIOLATIONS

Gift	Value of Gift
Reduced Rate of Interest:	
—90 day note at 14.5 percent dated 6/11/84	$ 121
40. Violation of Rule XLIII, clause 4	
—90 day note at 15 percent dated 9/10/84	$ 182
41. Violation of Rule XLIII, clause 4	
42. Violation of Rule XLIV	
1985	
Reduced Rate Housing	$ 6,918
43. Violation of Rule XLIII, clause 4	
44. Violation of Rule XLIV	
Use of an Automobile	$ 1,416
45. Violation of Rule XLIII, clause 4	
46. Violation of Rule XLIV	
Automobile Expenses	$ 1,451
47. Violation of Rule XLIII, clause 4	
48. Violation of Rule XLIV	
1986	
Reduced Rate Housing	$ 6,088
49. Violation of Rule XLIII, clause 4	
50. Violation of Rule XLIV	
Use of an Automobile	$ 1,416
51. Violation of Rule XLIII, clause 4	
52. Violation of Rule XLIV	
Automobile Expenses	$ 1,510
53. Violation of Rule XLIII, clause 4	
54. Violation of Rule XLIV	
1987	
Reduced Rate Housing	$ 7,044
55. Violation of Rule XLIII, clause 4	
56. Violation of Rule XLIV	
Use of an Automobile	$ 1,416
57. Violation of Rule XLIII, clause 4	
58. Violation of Rule XLIV	
Automobile Expenses	$ 2,849
59. Violation of Rule XLIII, clause 4	
60. Violation of Rule XLIV	

TABLE E-7

SUMMARY OF WRIGHT'S VIOLATIONS

Gift	Value of Gift
1988	
Reduced Rate Housing	$ 1,740
61. Violation of Rule XLIII, clause 4	
Use of an Automobile	$ 1,416
62. Violation of Rule XLIII, clause 4	
Automobile Expenses	$ 1,510
63. Violation of Rule XLIII, clause 4	
TOTAL	$150,030

We also believe that Wright's business dealings with Mallick constituted a violation of consideration 5 of the Code of Ethics for Government Service. This provision instructs a Member to "never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties." 72 Stat. Part 2, B12, clause 5. The Committee has admonished Members to heed consideration 5. [Ethics Manual, p. 67.]

We believe that reasonable persons could construe Wright's business relationship with Mallick, his wife's employment by Mallick, his living in quarters owned by Mallick, and his use of a car owned in part by Mallick as "influencing the performance of his governmental duties." Members are prohibited from accepting valuable gifts from persons with special interests because "Members of Congress hold office to represent the interests of . . . the general public whom they were elected to serve. . . . . As public servants, Members of Congress and congressional employees are expected to exercise impartial judgment in performing their public duties. The receipt of gifts, entertainment, favors, and things of value by Members or employees of Congress from certain persons or special interests may interfere with the impartial judgment and performance of official duties, and may derogate from that public trust inherent in a Government position . . . ." Ethics Manual, at 58. Whether or not it can be proved that Wright was influenced in the performance of his duties, Wright's long-standing reliance on Mallick for income, housing, and transportation, could raise the specter in the minds of reasonable people that his judgment would be biased in favor of Mallick's special interests.

In sum, we find 63 separate instances in which Wright violated House Rule XLIII, clause 4, or House Rule XLIV arising out of Wright's acceptance of over $150,000 worth of gifts from Mallick over a ten-year period.

F. Wright's Possible Exercise of Undue Influence in Dealing With the Federal Home Loan Bank Board

1. Allegations and Investigation

Preliminary Inquiry Resolution item number six concerns allegations regarding Wright's dealings with officials of the Federal Home Loan Bank Board. Throughout 1986 and 1987, the Bank Board faced a financial crisis of staggering proportions. The Federal Savings and Loan Insurance Corporation ("FSLIC") was nearly insolvent.[105] The Treasury Department and the Bank Board responded by an urgent appeal to Congress for recapitalization legislation. Under the Administration's plan, Congress would authorize the sale of $15 billion in bonds to recapitalize FSLIC. The bonds would be funded by an increase in the member savings and loan associations' insurance premiums.

During the period in which the recapitalization legislation was pending, Wright intervened with Bank Board officials on behalf of four Texans in particular and the Texas savings and loan industry in general. Two of the individuals that Wright aided were active in Democratic Party fundraising. The question raised by these allegations is whether in the course of these interventions, Wright exercised "undue influence" and wrongfully pressured Bank Board officials.

In investigating these allegations, Special Outside Counsel examined Wright's testimony, obtained and reviewed thousands of documents from the Federal Home Loan Bank System, and obtained the testimony and records of 24 witnesses,[106] including: Congressman Fernand St Germain, former House Banking Committee Chairman; Congressman Chalmers Wylie, House Banking Committee Ranking Minority Member; Congressman Douglas Barnard Jr., House Banking Committee member; Wright aides John Mack, Marshall Lynam, and Phil Duncan; Paul Nelson, former Banking Committee Staff Director; Richard Still, former Banking Committee General Counsel; Gary Bowser, Banking Committee staff; James Deveney, Banking Committee staff; M. Danny Wall, current Bank Board Chairman; Edwin Gray, former Bank Board Chairman; Shannon Fairbanks, former Bank Board Chief of Staff; L. Arlen Withers, Bank Board Director of Congressional Relations; Mary Ellen Taylor, former

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[105] FSLIC provides deposit insurance for all federally-chartered savings and loan associations and those state-chartered savings and loan associations which become FSLIC members. [12 U.S.C. § 1726.]

[106] Of the 24 witnesses listed, five have already been named as witnesses in Section III. C. and III. E. of this Report.

Special Assistant to the Bank Board Chairman; William Black, former FSLIC Deputy Director; Roy Green, former Dallas Federal Home Loan Bank President; H. Joe Selby, former Dallas Federal Home Loan Bank Regulatory Affairs Director; and private citizens Craig Hall, Thomas M. Gaubert, Don R. Dixon, George Mallick, Michael Mallick, and John Barry.

2. Applicable Standards of Conduct

Neither the House Rules nor their interpretations expressly define the term "undue influence." However, Advisory Opinion No. 1 of the Committee on Standards of Official Conduct (On the Role of a Member of the House of Representatives in Communicating With Executive and Independent Federal Agencies)—delineates the permissible ends of congressional interactions with federal agencies and proscribes the employment of certain means, regardless of the end. [Exhibit F-1.] Accordingly, any exercise of influence for improper ends or by the use of improper means—as defined by Advisory Opinion No. 1—is undue.[107]

In pertinent part, Advisory Opinion No. 1 provides as follows:

> REPRESENTATIONS
>
> This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:
>
> [1] request information or a status report;
>
> [2] urge prompt consideration;
>
> [3] arrange for interviews or appointments;
>
> [4] express judgments;
>
> [5] call for reconsideration of an administrative response which he believes is not supported by established law, Federal Regulation or legislative intent;
>
> [6] perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.

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[107] *Webster's Ninth Collegiate Dictionary* defines "undue" as "exceeding or violating propriety or fitness."

PRINCIPLES TO BE OBSERVED

The overall public interest, naturally, is primary to any individual matter and should be so considered. There are also other self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.
2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.
3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

[Exhibit F-1.] The remainder of the Advisory Opinion discusses the constitutional, political, and practical justifications for the congressional representation of constituents before federal agencies. [*Id.*]

Although the Committee did not expressly indicate in the Advisory Opinion which House Rule it was intended to interpret, it seems reasonable, if not self-evident, that the Opinion finds its authority within House Rule XLIII, clause 1:

> A Member . . . shall conduct himself at all times in a manner which shall reflect creditably on the House.

The issuance of Advisory Opinion No. 1 in January, 1970 was not the first congressional consideration of this issue. It has long been recognized that abuse of the legislative role in such interactions can threaten the fair and efficient operation of government. In 1951, a Senate subcommittee chaired by the late Senator Paul H. Douglas of Illinois noted that "[p]ressure through . . . hostile action in budgets or legislation is a kind of blackmail which is damaging to the public interest and which destroys satisfactory working relations between the legislative and executive branches." [*Ethical Standards in Government*, Committee Print, Subcommittee of the Senate Committee on Labor and Public Welfare, 82d Cong., 1st Sess. 57 (1951).] Indeed, as noted in the House Ethics Manual, federal courts have held that congressional interventions into ongoing administrative proceedings may so unduly influence the proceedings as to *nullify* the resulting agency action. [Ethics Manual, pp. 41-42.]

Of course, the Douglas subcommittee also recognized the legitimate role played by legislators acting as intermediaries for their constituents:

> It is, indeed, probably desirable that legislators should perform this function provided they observe proper restraints in doing so. For civil servants frequently become perfunctory in their work and careless of the people whom they are presumed to serve. Legislators can, therefore, legitimately serve as an informal board of inspectors. They can prevent administrators from flagging in their zeal and can detect and check abuses in the conduct of public business.

[*Ethical Standards in Government*, p. 28.]

The subcommittee discussed three types of legislative intercessions: (1) providing an introduction for the constituent and asking for a fair consideration of his request; (2) vouching for the constituent (although not necessarily for his request); and (3) recommending favorable action on the constituent's request. [*Id.* at 29.] The subcommittee noted that when the legislator asks the agency for a fair consideration of his constituent's request, the legislator, "to be very correct," should state that he is asking for nothing more than a fair consideration *on the merits* of the case.

The subcommittee found that the third approach—the recommendation of favorable action on the merits—gave rise to ethical problems:

> An expression of personal interest in a case cannot help but have some effect upon the administrators who are responsible. The extent of the influence depends upon the administrator (as well as the legislator). Some administrators find it hard to say "No," or to say "No" in such a way that they do not make enemies. Others of a different temperament affirm that they don't mind saying "No" and that legislators will usually accept such a decision in good grace.
>
> Presumably no legislators advocate causes which they do not think have merit, although they may be misguided; but some Members of the Congress have acquired a reputation for being aggressive in handling cases in which they are interested and for not being punctilious as to methods. *A reference from these individuals may seem to carry a threat even though the language is neutral.* If a department has, in fact, been subject to strong pressure from this legislator in a previous case, it is easy to be suspicious of all subsequent references.
>
> The personal power and position of a Senator or Representative affects the degree to which his requests will be carried out.

> If he is a member of a committee or a subcommittee which handles legislation or appropriation bills touching the department, he has a power which has sometimes been abused. Personal vendettas, although not frequent, are a matter of record in the history of Congress. Hostile committee members, and particularly committee chairman, have so great power over legislation or appropriation bills that their wrath must be feared.
>
> Consequently, it is a question whether a Member who is powerfully placed in a Senate or House committee can intervene for constituents or other supplicants, no matter how innocent his intent, without somewhat tipping the scales of justice. *Even the most conscientious administrator may decide that it is in the public interest to give a little more or a little less than the law requires, as the case may be, rather than to jeopardize his entire program or to hold up needed legislation.*

[*Id.* at 29 (emphasis supplied).]

The subcommittee found that legislators have at least two moral obligations in relation to their representation of constituents before federal agencies: ensuring that they are seeking to "push" cases only on their merits; and ensuring that the methods of intervening in administrative matters are not themselves so inherently damaging to the administrative process or to legislative-administrative relations that they offset any public benefit that might be gained from any such legislative pressure. [*Id.* at 29-30.]

In a series of lectures given at Harvard University in 1952, Senator Douglas suggested three ethical standards which legislators should observe in connection with constituent representations: (1) a legislator should not immediately conclude that the constituent is always right and the administrator is always wrong, but as far as possible should try to find out the merits of each case and only make such representations as the situation permits; (2) a legislator should not accept any money for representing constituents or anyone else before government departments; (3) in representing individual interests before administrative bodies, the legislator should be courteous and should know the merits of the case; he should not try to bully or intimidate the officials involved and he should make it clear that the final decision is in their hands. [P. Douglas, *Ethics in Government* 88-91 (1952).]

Although the subcommittee's and Senator Douglas's opinions are not binding standards, they do illuminate the principles which were later set forth in Advisory Opinion No. 1. Indeed, the Ethics Manuals prepared during the 98th and 100th Congresses both refer several times to the work of Senator Douglas and his subcommittee. [Ethics

Manual for Members, Officers, and Employees of the U.S. House of Representatives, 100th Cong., 1st Sess. 167, 168, 170-71; 98th Cong., 2d Sess. 37, 38, 41.] Accordingly, our analysis of Wright's interactions with the Federal Home Loan Bank Board includes references to the work of Douglas and his subcommittee where those expositions are consistent with Advisory Opinion No. 1 and other House standards of conduct.

A footnote in Advisory Opinion No. 1 cautioned that subsequent legislation, regulations, or rules may affect the Opinion's applicability. As forewarned, in 1976, Congress passed legislation further affecting congressional communications with federal agencies. The Government in the Sunshine Act prohibits *ex parte* communications from any interested person regarding the merits of matters pending in adjudicatory-type agency proceedings. [Pub. L. No. 94-409, § 4, 90 Stat. 1241, 1246, 5 U.S.C. § 557(d).] A Member contacting an agency on behalf of a constituent may be an interested person under the Act.

3. Factual Development and Conclusions

a. General Background

(1) Federal Home Loan Bank System

The Federal Home Loan Bank Board ("Bank Board") is the independent federal agency responsible for the administration and enforcement of the Federal Loan Bank Act, the Home Owners Loan Act of 1933, and Title IV of the National Housing Act. [12 C.F.R. § 500.1.] The Bank Board supervises twelve Federal Home Loan District Banks ("District Banks"), instrumentalities of the United States created by the Federal Home Loan Bank Act. [12 U.S.C. § 1423; 12 C.F.R. § 500.2.] The Bank Board charters federal savings and loan associations and supervises the FSLIC. [12 U.S.C. §§ 1423, 1437; Selby Tr. 23.]

The Bank Board consists of three members, each of whom is appointed by the President and confirmed by the Senate for a term of four years. The President designates one of the members as Chairman. Not more than two members of the Bank Board may be members of the same political party. [12 U.S.C. § 1437.]

As part of the Federal Home Loan Bank System, the District Banks provide liquidity to member savings associations located within their districts. Although they are instrumentalities of the United States and subject to federal control, the stock of the District Banks is owned, in part, by their member associations. [Selby Tr. 23-24.]

Each District Bank has a board of directors, a majority of whom are selected by its member associations. The minority directors (also known as "public interest directors") are selected by the Chairman of the Federal Home Loan Bank Board in Washington, D.C. The chairman of the board is always a public interest director. [Selby Tr. 29.]

The board of directors elects and sets the compensation of the District Bank's president. Although that selection must be approved by the Chairman of the Federal Home Loan Bank Board in Washington, D.C., the District Bank, not the Bank Board, pays the president's salary. [Selby Tr. 28-30, 33.]

District Bank presidents wear two hats: corporate head and Principal Supervisory Agent ("PSA"). As corporate head, the president is responsible to the Bank's shareholders (consisting primarily of the District Banks' member savings associations). As PSA, the president is responsible for enforcing Bank Board and FSLIC regulations among its member savings associations. [Selby Tr. 24.]

(2) Savings and Loan Crisis

Wright's interventions with the Bank Board were a by-product of the savings and loan crisis, news of which now blankets the nation's newspapers and airwaves. The thrift industry is suffering through its worst financial crisis since the Depression. Although the causes of the crisis are varied, several conditions contributed significantly: liberal deregulation policies, severe regional down-turns in property values, and incompetent or unscrupulous operators. The following sections provide a fairly detailed discussion of deregulation and its effects, mismanagement and fraud, and the Bank Board's attempts to manage the crisis.

(a) Deregulation and Its Effects

During the 1980s, the United States savings and loan industry underwent a significant transformation. Historically, savings and loan associations were limited to a fairly simple universe of transactions: they loaned money to individuals purchasing single-family homes and they paid passbook depositors interest rates limited by federal regulation. Neither lender nor depositor incurred much risk. Ever-increasing realty values ensured that loans were properly collateralized. Federal depository insurance ensured that savings were protected up to $40,000 per account.

During the 1960s and 1970s, the availability of various unregulated alternatives, such as money market mutual funds, began luring

depositors away from savings associations. The associations found they could not compete with these alternatives which paid rates several points higher than the maximums permitted savings associations under Federal Reserve Regulation Q. Although the rate ceilings had previously been considered favorable to the industry, the industry eventually came to support their elimination. [*Leveling the Playing Field: A Review of the DIDMCA of 1980 and the Garn-St Germain Act of 1982*, Readings in Economics and Finance from the Federal Reserve Bank of Chicago, pp. 18-20.]

In 1980, Congress passed the Deregulation and Monetary Control Act. That Act phased out deposit interest ceilings, granted broader investment powers to thrift institutions, and raised federal deposit insurance to $100,000 per account. [Green Tr. 10; *Leveling the Playing Field*, at p. 7.] As interest rates rose, the associations soon found themselves facing a "negative rate spread." In other words, the market interest rates the associations paid to depositors exceeded the income the associations earned on their loan portfolios. These portfolios consisted primarily of long-term low-rate mortgage loans. [Green Tr. 10; *Leveling the Playing Field*, at pp. 23, 28.]

In response, the thrift industry began lobbying the federal and state governments to further expand their operating authorities. Without such restrictions, the savings associations could make loans to commercial developers and thereby greatly expand their loan portfolios. [Selby Tr. 42; Black Tr. 77.] In doing so, the savings associations could grow out of their negative rate spreads. [Green Tr. 140.] Each high-rate loan added to the association's portfolio decreased the proportionate share of low-rate loans. [*Id.*]

The federal and state governments responded to the industry's requests and began lifting the restrictions on thrift operating authority. [Black Tr. 77.] In 1982, Congress passed the Garn-St Germain Act. [Black Tr. 77.] That Act expanded the permissible sources of funds, expanded the permissible uses of funds, and contributed toward the removal of interest rate ceilings. [*Leveling the Playing Field*, at p. 31.]

The federal government was not the first to act in this area, however. Texas led the nation in 1981 with a great expansion in the types of loans its association's could write. California and several other states soon followed. [Black Tr. 77; Fairbanks Tr. 37.] Indeed, the lure of increased member assessments encouraged competition among these and other states to grant the broadest charters. [Black Tr. 77.] As they would ultimately regret, Texas and California

granted the broadest charters in the nation.[108] [Black Tr. 77; *see* Bowser Tr. 36.]

Not only did the new state laws expand the types of loans savings associations could write, they also permitted them to make "direct investments." In other words, the associations could take direct equity positions in whatever business enterprise they chose. [Black Tr. 77.] Savings and loan associations invested in Wendy's hamburger restaurants, windmill farms, and Arabian horse breeding. [*Id.*]

Before the newly-unfettered associations could exercise their expanded operating authority—and thereby decrease their negative rate spreads—they needed to attract funds which they could lend. The associations began devising strategies to attract depositors. One of the principal new products developed was the "Jumbo CD," a $100,000 certificate of deposit offering a very high interest rate. [Black Tr. 14.] Jumbo CDs were marketed through money brokers who would either aggregate several smaller depositors into one $100,000 note or split large depositors into $100,000 units. [Black Tr. 13-14.]

The practice of insured deposit money brokerage enabled some associations to raise huge sums of money in brief periods of time, regardless of the association's financial condition. [Black Tr. 13-14, 78-79.] Because Jumbo CDs were limited to $100,000, each was fully insured by FSLIC. Whichever association in the country offered the highest rate could attract virtually unlimited funds. [Black Tr. 14.] Neither brokers nor their clients cared much about the condition of the issuing association so long as the federal government stood behind the certificate. [Black Tr. 13-14, 78-79.]

The increase in operating authority, and the resulting potential for high profits, attracted a new breed of operator to the formerly staid savings and loan industry. [Green Tr. 11; Fairbanks Tr. 37-38.] Many came from the real estate industry. [Black Tr. 81.] Former FHLB-Dallas President Roy Green believes that some of the new operators should not have been allowed into the industry. [Green Tr. 11.]

Commonly known as "high flyers," the new operators caused their associations to grow at phenomenal rates, sometimes as high as 200 to 300 percent annually. [Green Tr. 11.] At the time, the Texas savings and loan industry was growing at an average annual rate of around 38 percent. An operator could buy a $100 million association for $5 million and, in a brief period of time, could increase its assets to between $1.5 and $2 billion.[109] [Green Tr. 11.]

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[108] State-chartered associations, many in Texas and California, account for 98 percent of recent losses to FSLIC. [Black Tr. 77.]

[109] As noted above, loan portfolios constituted the bulk of the associations' assets.

Publications praised the high flyers as entrepreneurs and models for the industry. [Green Tr. 13.] They appeared to prosper between 1982 and early 1985. By mid-1985, however, the Southwest economic boom began to sour. As oil prices dropped, the Southwestern economy slowed and real estate values plummeted. Developers walked away from their savings-and-loan-financed projects. [*See* Black Tr. 80.] The associations were left with undervalued properties worth a fraction of the loans they secured.

(b) Mismanagement and Fraud

By the time the FHLB-Dallas regulators began closely examining the "high flyers," they discovered many to be grossly insolvent. Many were rife with mismanagement and fraud. All were guilty of extraordinarily poor loan underwriting.

Many of the "high flying" associations were undercapitalized. [Black Tr. 82.] Sometimes the undercapitalizations resulted from fraud perpetrated by the association's new owners at the time of acquisition. [*Id.*] For example, the new owners (many from the real estate industry) would often capitalize the associations by contributing land they already owned. [*Id.*] The new owner sometimes claimed that the property contributed was worth substantially more than the amount he agreed to contribute. [*Id.*] Accordingly, he would refund the difference to himself in cash. [*Id.*] In fact, the property contributed was often worth *less* than the amount agreed to be contributed. [*Id.*]

It was common among the "high flyers" to charge loan points and fees up front. The regulatory accounting rules then in place permitted associations to immediately recognize the up-front points and fees as income. [Black Tr. 67.] Accordingly, regardless of a loan's ultimate collectibility, an association could show enormous "paper" profits from the points and fees alone. [Black Tr. 67; Green Tr. 11-13.] To sustain their growth rates—and their income from points and fees—many of the new associations had written loans which were far riskier than safe and sound lending practices would dictate. Often the loans were under-collateralized and some were even unsecured.

In addition to the poor underwriting, many of the grossly insolvent institutions engaged in a Ponzi-scheme variant involving Acquisition, Development and Construction loans ("ADC") loans.[110] [Black

[110] A Ponzi scheme is an investment swindle in which early investors are paid off with money put up by later investors in order to encourage more and bigger risks.

(This footnote continued on following page.)

Tr. 70.] In ADC transactions, the association would commonly loan the borrower 100 percent of the property's recorded value. [*Id.*] Moreover, the borrower would pay the points and fees with the loan proceeds. [*Id.*]

The ADC loans typically funded high-risk projects; accordingly, they often generated significant points and fees. Four points plus an additional two percent in fees was common. [Black Tr. 70.] Because the loan proceeds funded the points and fees, the income recognized was purely "accounting" income—the difference between the recorded loan value and the proceeds disbursed. [*Id.*] The association received no cash. Nevertheless, the associations' "high flying" operators used this "income" to justify their huge salaries and dividends. [Black Tr. 79-81.]

Because all of the income recorded in ADC transactions involved cash disbursements, left alone, the association would soon deplete its cash reserves. Without cash, the association could not write new loans. Without new loans, the association could not record income from points and fees. Without recording income from points and fees, the association's operators could not justify their high salaries. Accordingly, the high-flying associations engaged in a never-ending quest for new deposits. [Black Tr. 71-72.]

The "high flyers" masked the poor quality ADC loans from the regulators by funding the first couple of years' interest from the loan proceeds. [Black Tr. 71.] With the interest paid up front, the loan could not technically go into default for at least two years. [*Id.*] During that time, the loan would appear to be current on the association's books.

William Black, former Deputy Director of FSLIC, explained the harm created by the extensive issuance of ADC loans:

> [T]he way the accounting was set up, you could, by definition, produce record profits by simply growing quickly and putting [all of the deposited funds] into ADC loans, . . . one of the riskiest possible areas of investment. When a borrower has no equity in a project, there are terrible incentives to walk away if anything goes the least bit wrong. There are incredible incentives for him to over-inflate the value of the property since he was walking away from those deals with cash.

[Black Tr. 80.]

(This footnote continued from preceding page.)

According to William Black, a former FSLIC Deputy Director, a classic example of an institution engaging in these type transactions was Vernon Savings & Loan, discussed extensively later in this Report. [Black Tr. 68.]

In addition to the ADC loan schemes, many of the "high flyers" had engaged in a type of fraud known as "land flips." [Black Tr. 68.] In a land flip, the same property is sold numerous times within a very brief period. Each time the property is sold, the price increases dramatically. Following the flips, an appraisal is obtained reflecting the inflated value. The inflated appraisal is then used to obtain financing from a savings and loan in an amount far greater than the property's fair market value. [Black Tr. 65-67.] Unscrupulous operators engaged in land flips because the resulting increase in the mortgage loan amounts increased the points and fees their associations could recognize as income. [Black Tr. 67, 70-72.]

In testimony before the House Banking Committee on January 13, 1989, a General Accounting Office representative testified that insider abuse and fraud were rampant among 26 failed thrifts reviewed by the GAO:

> GAO found that extensive and repeated violations of laws and regulations characterized the 26 failed thrifts we reviewed. Virtually every one of the thrifts was operating in an unsafe and unsound manner and was exposed to risks far beyond what was prudent. Under the Bank Board's definitions, fraud or insider abuse existed at each and every one of the failed thrifts; allegations of criminal misconduct (those to which the GAO had access) involved 19 of the 26.
>
> In contrast, the healthy thrifts we reviewed generally complied with laws and regulations and operated in a safe and sound manner.
>
> Further, the boards of directors of many of the failed thrifts submitted to the will of a dominant individual, and in doing so, abdicated their fiduciary duty.
>
> Changes in federal and state laws, and downturns in some sectors of the economy, were beyond management's control—they affected all thrifts. The weak condition of the failed thrifts, created by their illegal and/or unsafe practices coupled with high risk investments, was exacerbated by poor economic conditions. On the other hand, many thrifts which operated prudently survived the same adverse economic conditions.

[Exhibit F-2, pp. 12-13.]

(c) Supervisory Conditions Contributing to the Crisis

As demonstrated by the spectacular 1984 failure of Empire Savings & Loan of Mesquite, Texas, the Bank Board had failed to prepare its

examiners for the dramatically new environment created by deregulation.[111] [Barnard Tr. 12-13; *see* Exhibit F-3.] Realizing that the regional recession threatened even well-run associations, the Bank Board was determined to correct the supervisory failures which let Empire go undetected. Accordingly, the Bank Board and the Dallas Bank began increasing supervision and vigorously enforcing regulations in a region where lax supervision and enforcement was the traditional rule.

Contributing to the supervisory failures were the inadequate resources at the time of the Federal Home Loan Bank of Dallas ("FHLB-Dallas"), the Ninth District's Federal Home Loan Bank.[112] Before April 1983, the Ninth District's Federal Home Loan Bank was located in Little Rock, Arkansas. [Gray Tr. 27; Green Tr. 16.] When the District Bank relocated to Dallas, many of the Bank's supervisory personnel chose not to move, leaving the new FHLB-Dallas badly understaffed. [Green Tr. 16-17; Black Tr. 75.] Moreover, at the time of the move, the Little Rock regulators were already three to four years behind in the examination process on some institutions. [Green Tr. 17; Selby Tr. 35.]

Not only was the FHLB-Dallas understaffed, but the existing personnel often lacked the training and experience to properly monitor associations in the newly relaxed regulatory environment. [Green Tr. 17-18; Selby Tr. 41; Black Tr. 75-76.] The examination staff was trained in an era where the savings and loans engaged in nothing more exotic than single-family-home lending. [*Id.*] The staff had not been prepared for the phenomenal change in the industry wrought by deregulation. [*Id.*]

In addition to its personnel problems, the FHLB-Dallas supervisory apparatus was inefficient and outdated. [Selby Tr. 41.] When H. Joe Selby[113] took over as the FHLB-Dallas's Director of Regulatory Affairs in May 1986, the Bank had not yet started using computers. [*Id.*] Examiners were writing their reports in longhand. [*Id.*] According to Selby, the other federal banking agencies, the Federal Reserve, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency were all years ahead of the Federal Home Loan Bank Board System in methods of supervision and examination. [*Id.*]

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[111] Empire's failure cost FSLIC over $160 million. [Exhibit F-3, p. 2.] Empire's primary assets were condominiums on Dallas's I-30 corridor. The city of Mesquite, a Dallas suburb, condemned and bulldozed most of the condominiums. [Selby Tr. 38-39.]

[112] The Ninth District includes the states of Texas, New Mexico, Louisiana, Arkansas, and Mississippi. [Green Tr. 16.]

[113] See Section III. F.3.c.(6) below for a further discussion of Selby.

(d) Regulatory Responses to the Crisis

In early 1984, in an attempt to restrain the extraordinary growth of certain institutions, the Bank Board promulgated a regulation which would have eliminated insured deposit brokerage as an activity. [Black Tr. 11-16; Gray Tr. 42.] As noted above, insured deposit brokerage fueled much of the growth in the "high flyer" associations. Unfortunately for the Bank Board, the courts struck the regulation shortly thereafter as exceeding the Bank Board's statutory authority. [Exhibit F-4, *FAIC Securities, Inc. v. United States*, 595 F. Supp. 73 (D.D.C.), *aff'd*, 768 F.2d 352 (D.C. Cir. 1985).]

In January 1985, the Bank Board responded to the loss of the brokered funds regulation by adopting a new regulation which restricted deposit growth to earnings growth. [Gray Tr. 42-43.] The Bank Board also began phasing out other outdated regulations which had permitted the rapidly growing associations to operate with virtually no real net worth. [Gray Tr. 42-43; Black Tr. 17-18.]

The absence of any real capital requirement and the existence of federal deposit insurance created what economists term a "moral hazard." [Black Tr. 18, 78.] If a "high flying" thrift proved to be successful, its shareholders received all of the benefits; on the other hand, if unsuccessful, the FSLIC bore all of the losses. [Black Tr. 78-79.]

In July 1985, in a further attempt to manage the crisis, the Bank Board transferred its control of the field examination function to the District Banks. This change removed the examiners from the federal civil service salary caps, thus permitting higher salaries and the possibility of attracting more highly competent personnel. [Gray Tr. 32; Green Tr. 18-19; Selby Tr. 27-28; Black Tr. 23; Barnard Tr. 12.]

In December 1985, the Bank Board adopted its first loan-classification regulation. The regulation required examiners to classify loans based on credit factors. Such classifications were used to determine the solvency of an association. Until it adopted this regulation, the Bank Board was the only federal banking agency *not* using loan classifications. [Selby Tr. 43-47.]

In early 1986, the Bank Board and the FHLB-Dallas perceived ever-worsening conditions in the Southwest economy and thrift industry. As noted above, many of District 9's approximately 285 thrifts had not been examined in over three years. In an effort to determine their current conditions, the Bank Board and the FHLB-

Dallas began a massive examination of almost all of the associations in District 9.[114]

Associations used to a relaxed regulatory environment chafed under the FHLB-Dallas's new emphasis on supervision and regulatory compliance. [Bowser Tr. 27.] The classification regulation in particular engendered a great deal of controversy. [Selby Tr. 47.] Many associations made their voices heard on Capitol Hill. But the loudest screams came from the "high flyers," the new breed of savings and loan operators who had arisen since deregulation. [Selby Tr. 66.] The "high flyers" had taken "mom-and-pop" associations and turned them into apparent financial giants with billions in assets. And yet, as noted above, many of the "new entrepreneurs" had built their associations on risky direct investments, uncollectible loans, and land flips.

When the Southwest was booming and real estate was hot, the "high flyers' " extraordinary growth masked their poor lending practices and fraud. [*See* Bowser Tr. 30.] When the bottom dropped out of the Texas real estate market, examinations showed that the "high flyers' " profits had been an illusion. [*See* Black Tr. 73.]

Faced with limited resources, the Bank Board and the FHLB-Dallas concentrated their examiners on the worst associations as they were discovered. [Green Tr. 38-39.] These associations, the "high flyers," were the most threatened by the strict enforcement regime, and they had the resources to make their voices heard. It was their complaints which apparently reached Wright's offices. [Fairbanks Tr. 35-40.]

(3) FSLIC Recapitalization

The rising tide of savings and loan failures placed enormous strains on the FSLIC fund. Under federal law, when FSLIC places an insolvent federally insured savings association into a receivership, it must pay off the insured depositors almost immediately.[115] According to William Black, approximately 95 percent of the amount owed is historically paid within three or four days of an association's closing.

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[114] Despite the restaffing efforts described above, the examination required the FHLB-Dallas to obtain manpower assistance from ten of the other eleven District Banks. The new examiners hired by the FHLB-Dallas required a two-year period before they were fully trained. [Selby Tr. 34-36.]

[115] "In the event of a default by any insured institution, payment of each insured account in such insured institution which is surrendered and transferred to the Corporation shall be made by the Corporation as soon as possible either (1) by cash or (2) by making available to each insured member a transferred account in a new insured institution in the same community or in another insured institution in an amount equal to the insured account of such insured member . . . ." [12 U.S.C. § 1728 (b).]

[Black Tr. 152-53.] Consequently, each closure requires FSLIC to make an immediate cash outlay in an amount approximately equal to the insolvent association's deposits. As FSLIC's reserves dwindled, it lost the financial ability to close even the most insolvent associations.

(a) Recapitalization Attempts in the 99th Congress

On May 22, 1986, at the Administration's request, Congressman St Germain and Congressman Wylie introduced a bill (H.R. 4907) to recapitalize the rapidly dwindling FSLIC fund. [St Germain Tr. 8-9.] The bill was a joint product of the Treasury Department and the Bank Board. Following its introduction, the bill was referred to the House Committee on Banking, Finance and Urban Affairs.

The recapitalization bill provided for $15 billion in new funds for FSLIC. Specifically, the bill required the 12 Federal Home Loan District Banks to put up $3 billion as the capital for a new financing corporation. The financing corporation would then sell bonds in the amount of $15 billion. FSLIC's member savings associations would fund the bonds through the payment of mandatory assessments. [Green Tr. 43-44; Selby Tr. 67-70; Black Tr. 140.] The bill did not require the use of any general revenues. [Black Tr. 139-40.]

On July 17, 1986, the Banking Committee's Subcommittee on Financial Institutions Supervision, Regulation and Insurance approved the recapitalization bill without significant modification. The bill was reported to the full committee by voice vote. Richard Still, the Banking Committee's General Counsel, observed that the voting out by voice vote of such a large bill indicates that there was little controversy at the time among the members of the Subcommittee. [Still Tr. 17, 23.]

Despite the low level of controversy at this juncture, the recapitalization bill sat in the Banking Committee between July and September. The Bank Board was becoming increasingly concerned about FSLIC's lack of resources to address problem associations. On September 17, Bank Board Chairman Edwin Gray wrote to Banking Committee Chairman St Germain to express the urgent need for FSLIC recapitalization. [Gray Tr. 109; Exhibit F-5.] In his letter, Gray related that FSLIC's primary reserves had dropped to $2.5 billion. At the time, FSLIC-insured deposits in the nation's 3,249 savings associations exceeded $800 billion. [*Id.*]

Gray's letter stated that 252 associations had significant supervisory problems which required FSLIC assistance. The 252 problem associations had stated assets of close to $95 billion. FSLIC considered 130 of these associations, with stated assets of $47.6 billion, to be severely troubled. [*Id.*]

On September 19, 1986, St Germain combined the recapitalization bill with other legislation being considered by the Banking Committee. The multi-title bill (H.R. 5565) passed the Committee without significant amendment by a vote of 47 to 1. On September 23, St Germain introduced clean bill H.R. 5576 in lieu of H.R. 5565 and requested that it be placed on the "suspension calendar." The House suspension calendar is reserved for bills generating little or no controversy. Under the House Rules, it takes a two-thirds vote to pass a bill under suspension of the Rules. [Still Tr. 24.]

On Friday, September 26, 1986, the Congressional Record reported that the FSLIC recapitalization bill (H.R. 5576) was scheduled for consideration by the full House under a suspension of the rules on Monday, September 29. [Exhibit F-6.] As discussed in detail later in this Report, Wright removed the bill from the calendar prior to its consideration. The bill was not returned to the schedule until October 6. [Exhibit F-7.] On October 7, it passed the House under a suspension of the Rules by voice vote. [Exhibit F-8.]

During his testimony, Congressman Doug Barnard Jr. of the House Banking Committee noted that the fact that the recapitalization bill came before the House under a suspension of the Rules indicates that the Banking Committee supported the bill unanimously. [Barnard Tr. 15.] The Banking Committee's Ranking Minority Member, Congressman Chalmers P. Wylie, testified that he did not believe that significant changes were made to the bill between its introduction and its final passage by the House on October 7. He agreed that it was placed on the suspension calendar because it was noncontroversial. [Wylie Tr. 9.]

Despite its passage by the House on October 7, 1986, the recapitalization bill died in the Senate. The bill had not yet been conferenced when Congress adjourned on October 18. [Gray Tr. 155.] Congressman Wylie recalled that a controversy had arisen over a Senate amendment regarding direct investments. [Wylie Tr. 10; *see* Wall Tr. 8-9.]

Former Banking Committee General Counsel Still recalled that the Senate's inaction related to the inclusion of housing legislation in H.R. 5576, the multi-title bill which included the recapitalization bill. [Still Tr. 25.] According to Still, the Republican-controlled Senate supported the Administration's opposition to a housing bill. [Still Tr. 25; *see* Wall Tr. 8-9.]

Still said that the House had "all but adjourned" on Friday, October 17, but had set up "a token procedure" for Saturday. Apparently the House had communicated to the Senate on Friday that the Members

had been there long enough and that they were remaining only for emergencies or special measures on which there was no controversy. [Still Tr. 26.]

When the Senate version of the recapitalization bill arrived in the House on Saturday evening, it contained provisions reducing the funding level and providing for "exit fees," a measure designed to discourage healthy FSLIC members from leaving the fund. [Still Tr. 26-27.] According to Still, the Senate's changes in the recapitalization bill were extraordinarily controversial, so the bill died. [Still Tr. 27.]

As indicated above, several witnesses testified that there was little controversy surrounding the need for FSLIC recapitalization, the amount of recapitalization, or the form of the bill in the 99th Congress. [Barnard Tr. 15; Wylie Tr. 9; Still Tr. 24.] The savings industry itself, as represented by the U.S. League of Savings Institutions, had not yet stated a position. [Still Tr. 28-29.] Still did recall, however, that by the end of the 99th Congress, the U.S. League had begun to push for alternatives to the Administration's recapitalization plan. [Still Tr. 29.]

At the U.S. League's annual convention in November 1986, industry leaders praised the Senate's scaled-down version of the Administration's recapitalization plan. [Exhibit F-9.] The Senate version provided for $3 billion in funding for one year as opposed to the Administration/House plan which provided for $15 billion over five years. [*Id.*]

(b) Recapitalization Attempts in the 100th Congress

According to Still, the Banking Committee leadership, Chairman St Germain and Ranking Minority Member Wylie, had promised the Administration and the Bank Board that FSLIC recapitalization would receive top priority in the new Congress. [Still Tr. 32.] On January 6, 1987, they reintroduced the recapitalization bill in substantially the form proposed by the Administration in the previous Congress. [H.R. 27.] The goal was to bring the bill to the floor by March. [Still Tr. 32.]

At this juncture, according to Still, Members began to increasingly pass along complaints about the regulators' "arbitrary" actions. [Still Tr. 33.] Still attributed the cause, in part, to the massive hiring of new examiners following the Bank Board's transfer of responsibility for the examination force to the District FHL Banks. [Still Tr. 38-39.] Still suggested that the new examiners had not had time to be properly trained. [Still Tr. 39.]

On January 21 and 22, the Banking Committee held hearings on the recapitalization bill. During these hearings, the representative of the U.S. League of Savings Institutions proposed a $5 billion two-year recapitalization plan with "forbearance" provisions. [*FSLIC Recapitalization Act of 1987: Hearings on H.R. 27 Before the Comm. on Banking, Finance and Urban Affairs*, 100th Cong., 1st Sess. 59 (1987).] By "forbearance," the League representative meant that the Bank Board should give "breathing space" to "well-managed institutions in trouble due to local economic conditions." [*Id.* at 104.] The U.S. League did not speak for the entire industry. At the same hearing, a representative from the National Council of Savings Institutions testified that his organization urged the immediate passage of the Administration's recapitalization plan. [*Id.* at 64.]

On January 29, Wright held a luncheon with Fernand St Germain, and several other congressmen to discuss complaints being received about the Bank Board.[116] [St Germain Tr. 24-25; Still Tr. 40; Exhibits F-10.] According to St Germain, the Texas delegation complained of the Bank Board's "high handedness." [St Germain Tr. 27.] As a result of the luncheon, St Germain agreed to hold subcommittee hearings regarding the allegations. [St Germain Tr. 27-30.] On February 2, 1987, the Banking Committee referred H.R. 27 to its Financial Institutions Subcommittee for the purpose of conducting those hearings.

St Germain testified that the concept of including forbearance provisions in the recapitalization bill first arose at this luncheon.[117] [St Germain Tr. 24.] As indicated above, the "forbearance" provisions would require the Bank Board to ignore statutory and regulatory violations under certain conditions. Those in favor of such provisions argued that many savings institutions were troubled solely because of the Southwest's economic downturn. Given time, they argued, the economy would recover and so would the troubled institutions.

The Bank Board, on the other hand, argued that they had been granting whatever rational forbearances could be granted for years. For example, the Bank Board permitted associations with negative net worth to remain open. No other banking regulatory agency would do the same. In any event, because of FSLIC's insolvency, there were no funds available to close troubled associations.

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[116] The date of the luncheon was determined by reference to a letter from St Germain to Wright dated February 3 which referred to the luncheon on January 29. [Exhibit F-10.]

[117] St Germain's recollection was mistaken. As noted above, the forbearance concept was first introduced by the U.S. League of Savings Institutions in its testimony before the House Banking Committee on January 20, 1987.

Nevertheless, a movement grew for what the Bank Board believed were extremely destructive forbearance provisions. According to William Black, the Bank Board officials understood from sources on Capitol Hill and from the press that Wright was behind this movement. [Black Tr. 137.]

Following the luncheon, the Banking Committee's General Counsel, Richard Still, sent two of the Committee's investigators to Texas to investigate the FHLB-Dallas and to interview potential witnesses for the hearings. [St Germain Tr. 17; Deveney Tr. 70.] The investigators, Gary Bowser and James Deveney, were both former General Accounting Office auditors. At the GAO, they had performed financial investigations of various savings and loans. Bowser was involved with the recapitalization legislation during the period beginning with his Dallas investigation and ending with its final enactment. [Bowser Tr. 40-41.]

Bowser and Deveney's specific assignment was to investigate the charges of arbitrary and capricious behavior on behalf of the FHLB-Dallas examiners and to obtain a list of potential witnesses to testify at the upcoming subcommittee hearings. [Bowser Tr. 13.] In addition, they sought to determine the severity of the region's problems. [Bowser Tr. 17.] They considered five troubled institutions in some detail: Independent American Savings Association; Vernon Savings & Loan; Western Savings & Loan; Mercury Savings & Loan; and Ben Milan Savings & Loan. [Bowser Tr. 17.]

In Dallas, Bowser and Deveney held discussions with officials from the FHLB-Dallas and reviewed their documentation of examinations. [Bowser Tr. 17-18.] They found that there were "a surprising number of large supervisory cases that were . . . piled up in the wings of the Dallas Bank waiting to be addressed." [Bowser Tr. 18.] They concluded that the serious net worth deficiencies and the amount of insider abuse and fraud which was documented by the FHLB-Dallas indicated that there was a very serious problem and that the losses would be very great. [Bowser Tr. 18.]

As to the allegations of arbitrary and capricious behavior by the examiners, Bowser and Deveney found "maybe a mixed bag." [Bowser Tr. 18.] In interviewing local industry members, they heard a number of stories that certain regulations were being carried out in an "inflexible, intolerant fashion." [*Id.*] They heard "that certain abuses that would be considered technical abuses at best were reacted to by the regulatory structure [as] gross errors on the part of management." [*Id.*]

On the other hand, Bowser and Deveney found that the FHLB-Dallas examiners had appropriately directed their supervisory re-

sources given the nature of the region's problems. [Bowser Tr. 28.] As to the five institutions they examined in detail, Bowser testified that based on their violations of regulations and their unsafe and unsound banking practices, he could find nothing inappropriate about the regulators' actions. [Bowser Tr. 30.] Bowser's chief criticism was the "previous ineptitude of that District Bank in not getting these problems under control a lot quicker than they did." [*Id.*]

On March 3 and 4, 1987, the Subcommittee on Financial Institutions held hearings on H.R. 27. [*FSLIC Recapitalization Act of 1987, Hearings Before the Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the Comm. on Banking, Finance and Urban Affairs*, 100th Cong., 1st Sess., No. 100-8; Selby Tr. 71.] The witness list included Roy Green, FHLB-Dallas President, and H. Joe Selby, FHLB-Dallas Director of Regulatory Affairs. [*Id.*] Deveney stated that the hearings supported his findings from his investigation of the FHLB-Dallas: The regulators made a good case and the savings and loan operators did not. [Deveney Tr. 66-67.] Deveney was surprised when St Germain thereafter offered a $5 billion recapitalization plan. [Deveney Tr. 67, 78-80.] He recalled commenting to Bowser that he "was amazed at how things are accomplished up here on the Hill." [Deveney Tr. 79.]

On March 19, 1987, Wright appeared at a Democratic Caucus to lobby for certain provisions in the recapitalization bill. [Exhibit F-11.] Wright said that there were many "horror stories" about abusive regulators. He said he could support a $15 billion recapitalization bill, so long as spending was limited to $5 billion in two years and the bill included forbearance and oversight provisions. [*Id.*]

On March 27, 1987, the Senate passed S. 790, its version of the recapitalization bill. On March 31, the Subcommittee on Financial Institutions considered the recapitalization bill. St Germain offered a $5 billion, two-year plan with forbearance provisions as a substitute for the $15 billion, five-year plan without forbearance provisions which he had introduced at the beginning of the session. Congressman Carper moved to amend St Germain's substitute bill by raising the recapitalization amount to $15 billion. The Carper amendment passed the Subcommittee by a vote of 23-20.

The next day, April 1, the full Committee considered the bill. Congressman Neal offered an amendment lowering the recapitalization amount to $5 billion. The Neal amendment passed by a vote of 25-24. On April 22, 1987, the Banking Committee reported its $5 billion recapitalization bill, now including significant forbearance provisions, to the House.

On April 28, 1987, Wright and St Germain issued a joint press release supporting a five-year, $15 billion recapitalization plan. [Exhibit F-12.] Wright's aide Marshall Lynam explained why Wright changed his position. According to Lynam, Wright had recently met in Fort Worth with Treasury Secretary James Baker.[118] Lynam said that Baker asked for Wright's help in obtaining a $15 billion recapitalization bill. Wright expressed his concern that the Bank Board would use the money to put troubled savings and loans out of business rather than make a good faith effort to save as many as possible. [Lynam Tr. 126-27.] According to Lynam, Baker replied that the administration would try to work on Wright's concern, but that the financial markets would not accept the $5 billion bill as providing a credible amount of recapitalization. Baker said that FSLIC needed $15 billion to become credible in the financial world. [Lynam Tr. 127.]

On May 5, 1987, the recapitalization bill came before the House. St Germain offered an amendment raising the amount of recapitalization to $15 billion. Both Wright and St Germain spoke in support of the amendment. [Exhibits F-13, F-14.] On the other hand, House Majority Whip Tony Coelho spoke in support of $5 billion. [Exhibit F-15.] St Germain's amendment failed by a vote of 153-258. The House passed the $5 billion plan with forbearance provisions by a vote of 402-6. [Gray II Tr. 78-80.]

The Senate passed a $7.5 billion recapitalization bill on May 14 and requested a conference. The conferees met between June 23 and 30. On July 1, they approved an $8.5 billion plan with reduced forbearance provisions. On July 29, the conferees reconvened and approved a $10.8 billion plan.[119] Bank Board Chairman Gray testified he heard that the amount was raised to avoid a presidential veto. [Gray II Tr. 44-45.]

The House agreed to the Conference Report on August 3 (Conference Report 382-12), and the Senate followed suit on August 4 (Conference Report 96-2). President Reagan signed the act into law on August 10, 1987 (P.L. 100-86).

b. Mallick's Investigation of the Thrift Industry

(1) October 1986 Luncheon

Sometime in September 1986, Wright asked George Mallick to set up a meeting with some of their friends in the Fort Worth real estate

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[118] The Speaker's aide John Mack also testified that Baker contacted Wright. [Mack Tr. 102.]

[119] The borrowing authority is actually $10 billion. The $.8 billion is offset by a reduction in the FSLIC premium income that FSLIC would otherwise receive. It is used to pay the FSLIC's "secondary reserve." [Black Tr. 143.]

business. [Mallick Tr. 98.][120] According to Mallick, Wright said that "a number of his colleagues had been telling him stories about the real estate business and the thrift business in our part of the country." [*Id.*] Wright said he wanted to hear what the local businessmen had to say. [Mallick Tr. 98, 102.] At this juncture, the focus of the meeting was not savings and loans alone. [*Id.*]

Mallick testified that he called a few of his friends in the real estate business and invited them to a luncheon at Fort Worth's Ridglea Country Club on October 21, 1986. [Mallick Tr. 100.] He originally anticipated that about 15 people would attend. [*Id.*] According to Mallick, after news about the meeting got out, the luncheon grew to approximately 150 guests. [*Id.*]

Marshall Lynam testified that he attended the Fort Worth luncheon. [Lynam Tr. 127.] Lynam recalled that Mallick had mentioned to Wright that several people involved with savings and loans, real estate, and housing industry finance had asked for a meeting with Wright. [*Id.*] Lynam said that Wright had the impression that there were only six to eight people and he said he would be glad to meet with them. [*Id.*]

The guest list included people in the real estate industry: appraisers, brokers, developers, and builders. [Exhibit F-16.] They invited anyone who did business with thrifts or had real estate interests in that part of the country. [Mallick Tr. 106.] They did not invite any banking regulators. [*Id.*] Wright invited several other congressmen to the luncheon and at least one attended. [*Id.* at 108.]

Mallick said he moderated the meeting, which followed a question-and-answer format. [Mallick Tr. 108.] About fifteen people spoke. [*Id.*] According to Lynam, the persons attending the luncheon "recounted horror story after horror story about the capricious and arbitrary manner that the Bank Board was treating savings and loans in the Southwest." [Lynam Tr. 128.]

Mallick testified that toward the luncheon's end, Wright publicly asked him to prepare a study for him of the Ninth District's real estate and savings and loan problems. [Mallick Tr. 102, 109, 115.] Mallick acknowledged that he had no expertise in the savings and loan industry. [*Id.* at 102-03.] He said Wright chose him to do the study because: "The Speaker and I are friends and the Speaker knew that I had been in business for many years in Fort Worth and he also knew I was familiar with the economic conditions in Texas . . . ." [*Id.* at 102.] Mallick said that Wright trusted his judgment as a business-

[120] Mallick's background is discussed in Sections III. E.3.a. and III. E.3.g. of this Report.

man and he knew that Mallick would be fair in any report to him. [*Id.* at 103.]

According to Mallick, Wright asked him to prepare the study so that he could "find out what the real story was." [Mallick Tr. 109.] Wright said that the Bank Board was asking for recapitalization and he had heard that they were using the money to close down thrifts. [*Id.*]

According to Lynam, Wright was acutely aware at this point in time "of how troubled many people were about the state of the industry, and [he] was eager to be whatever help he could." Lynam said that when word got out about the meeting, Wright's office was besieged with calls from other members of the industry: "somehow it got out in the industry that Jim Wright expressed some interest in this, and they were looking for somebody to help them." [Lynam Tr. 128.]

Lynam testified that he was not aware that anyone from Wright's office ever requested any research of the Bank Board's side of the issue. Nor was Lynam aware of any outside banking experts being consulted regarding these issues. [Lynam Tr. 129-30.]

(2) Mallick's Investigation of the Savings and Loan Crisis

According to Mallick, he conducted his investigation of the thrift industry between October 21, 1986, and February 10, 1987. On that date, he presented his report to Wright.[121] [Mallick II Tr. 104.] Mallick's report is somewhat less than a sophisticated analysis of the savings and loan crisis. [Exhibit F-17.] Indeed, it is little more than a collection of unsupported and conclusory assertions placing blame for the crisis on the regulatory activities of the Bank Board and the FHLB-Dallas.

Former FHLB-Dallas President Roy Green says he met with Mallick on several occasions to discuss the issues being investigated. Green testified that it was obvious from his conversations with Mallick "that he did not have an intimate knowledge of the bank system nor the savings and loan industry." [Green Tr. 141.] Green said that Mallick's lack of knowledge "was somewhat of a surprise" given his responsibility for the investigation. [Green Tr. 141.]

Green had not reviewed Mallick's report prior to his hearing before the Committee. [Green Tr. 91, 115.] Green was surprised by many of

[121] February 10, 1987, was also the date of the meeting between Wright, the Mallicks, and several Bank Board regulators which is discussed in Section III. F.3.c.(8), below.

Mallick's conclusions and recommendations, and he strongly challenged others. [Green Tr. 85-86, 119, 121-23, 128.] Green said he spoke with Mallick under the pretext that Mallick wanted a balanced perspective. [Green Tr. 119.] After reviewing Mallick's report, Green testified that "the balanced perspective ... that they wanted is completely absent. ... [T]his is not even close to a fair exposition of the problem as I would view it." [Green Tr. 148.]

c. Wright's Bank Board Interventions

During the period that the recapitalization bill was pending, Wright interceded with the Bank Board on behalf of four individuals: Craig Hall, J. Scott Mann III, Thomas M. Gaubert, and Don R. Dixon. The Bank Board officials adamantly believe that Wright coerced them—or attempted to coerce them—into changing regulatory responses with regard to three of the four individuals. They believe that Wright sought specific regulatory results. [Gray II Tr. 72.] Moreover, they believe that Wright had placed a "hold" on the FSLIC recapitalization bill until the Bank Board complied with his demands. [Gray II Tr. 75-77.]

In addition, Wright communicated with Bank Board officials on several other occasions during the above time period. Some of these other communications were initiated by Wright and some by the Bank Board. Moreover, Wright's staff communicated with Bank Board staff on numerous occasions. The following sections discuss chronologically communications between Wright and the Bank Board and other relevant events.

(1) General Meeting of September 15, 1986

In early September 1986, Wright requested a meeting with Edwin Gray, Chairman of the Federal Home Loan Bank Board. According to Gray, following his receipt of Wright's request for a meeting, he telephoned Paul Nelson, Staff Director of the House Banking Committee. Gray asked Nelson what he should do to prepare for the meeting. Nelson responded, "Only one thing. Just find out who Tom Gaubert is and learn all that you can about Tom Gaubert."[122] [Gray Tr. 54.] In accordance with Nelson's advice, Gray received a briefing from Rosemary Stewart, Bank Board Director of Enforcement, regarding Tom Gaubert and his dispute with the Bank Board. Although Nelson recalled speaking with Gray during this time period, he did not recall the specific conversation. [Nelson Tr. 14-17.]

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[122] See Section III. F.3.c.(5) for a further discussion of Gaubert.

The meeting took place in Wright's office on September 15, 1986. [Withers Aff. ¶ 6.] Wright met with Gray, Shannon Fairbanks, L. Arlen Withers, and Harry Quillian. Fairbanks was Gray's Chief of Staff, Withers was the Bank Board's Director of Congressional Relations, and Quillian was General Counsel. Also in attendance were Congressmen Steve Bartlett (R., Tex.), John Bryant (D., Tex.), and Martin Frost (D., Tex.). Although the meeting lasted between one-and-one-half and two hours, Wright had to leave unexpectedly after the first twenty minutes. [Gray Tr. 61-69; Fairbanks Tr. 91-93; Withers Tr. 23.]

Wright called the meeting to pass along numerous reports he had received that Bank Board regulators were mistreating Texas savings and loans. He said he had heard that regulators from the Bank Board in Washington and the FHLB-Dallas were using "heavy-handed" or "Gestapo-like" tactics. Wright said the reports were from people he relied on and trusted. [Gray Tr. 67; Withers Aff. ¶ 7.] When he had to leave, Wright asked the Bank Board officials to stay and continue the discussion with the other Members. [Gray Tr. 68.]

Although the record is somewhat unclear, Wright may have mentioned Craig Hall at some point during the meeting. As described in detail below, Hall is the subject of a later telephone call from Wright to Chairman Gray.[123] [Withers Tr. 25; Gray Tr. 67.] On the other hand, contrary to Nelson's warning, neither Wright nor the other congressmen mentioned Tom Gaubert. [Gray Tr. 60.]

Fairbanks testified that Wright's particular concerns did not seem to be on the agenda. Rather, the meeting was an opportunity for the other congressmen to pass along their concerns. [Fairbanks Tr. 92.] Congressmen Bryant and Bartlett said they had heard complaints similar to the ones mentioned by Wright from their constituents. [Gray Tr. 61; Withers Tr. 24.] The congressmen told the Bank Board officials that it was a very bad time for Texas, but that the economy would turn around. They wanted the Bank Board to be aware that the economic downturn in Texas was not permanent. [Withers Tr. 39.]

Gray told the congressmen that he knew of no "Gestapo-like" activities. He said that if they knew of specific instances of mistreatment, the Bank Board would investigate. [Gray Tr. 65.] Although the congressmen cited examples of mistreatment, they would not identify the specific institutions involved. The congressmen expressed their fear that the Bank Board would take reprisal actions against any institutions mentioned. Gray expressed his

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[123] See Section III. F.3.c.(2) for a further discussion of Hall.

frustration to the Members. He said: "How are we supposed to deal with these alleged examples of mistreatment when you won't tell us what they are?"[124] [Gray Tr. 62.] Gray promised to look into the charges of heavy handedness. [Withers Tr. 44.]

Following the meeting, Gray testified that he was extremely depressed. [Gray Tr. 70.] He felt there was a complete lack of understanding of what the Bank Board was up against as regulators protecting the FSLIC. [*Id.*] Fairbanks testified that Gray could not understand why a "good standard Democrat" did not understand the need for regulation. [Fairbanks Tr. 95.] Because Wright had to leave the meeting early, Gray decided to request a private meeting so that he could further explain the Bank Board's positions on the issues raised. [Gray Tr. 70.] That meeting took place on October 3, 1986.[125]

(a) Analysis and Conclusions

This meeting represented appropriate interactions between congressmen and agency officials. Advisory Opinion No. 1 expressly permits Members to request information or status reports. Wright and other Members had received complaints about the Bank Board from their constituents. The meeting's purpose was to pass along these complaints. Wright himself did little more than set the stage for the ensuing discussion before he departed. Accordingly, we believe that the meeting represented a proper interaction in accordance with the House Rules as interpreted by Advisory Opinion No. 1.

(2) Telephone Call Regarding Craig Hall

Following the September 15, 1986 meeting described above, Wright called Chairman Gray regarding Craig Hall.

(a) Hall's Dispute With the Bank Board

Craig Hall is a Dallas-based real estate syndicator and the chairman of Hall Financial Group, Inc., a Texas corporation. According to

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[124] At some point, Congressman Bryant identified one of his constituents with a specific Bank Board complaint. Gray and Fairbanks agreed to investigate. [Withers Tr. 42; Fairbanks Tr. 92-93.] Following the investigation, another Bank Board staff member, Mary Ellen Taylor, responded to Mr. Bryant's inquiry. [Fairbanks Tr. 93.] Bryant did not request any specific resolution of his constituent's claim. [Withers Tr. 43.]

[125] Although Gray testified that the second meeting took place one week to ten days after the September 15 meeting [Gray Tr. 70], other sources conclusively place the second meeting on October 3. For example, in an October 7 letter to Wright, Scott Mann refers to the second meeting as occurring on the previous Friday, or October 3. [Exhibit F-26.] Likewise, an article appearing in the *Dallas Morning News* on October 6 places the meeting on October 3. [Exhibit F-18.] We received no evidence indicating that the Speaker and Gray met face-to-face more than the two times described.

Hall, Hall Financial operates in excess of 65,000 apartments and four million square feet of office space throughout the United States. Moreover, Hall Financial serves as the general partner of approximately 325 limited partnerships which own these properties. Through these partnership interests, Hall Financial is one of the largest owners of real estate in Texas and its neighboring states. [Hall Tr. 7-8; Green Tr. 47.]

In addition to his chairmanship of Hall Financial, Hall serves as chairman of Resource Savings Association of Dallas. Hall's dispute with the Bank Board involved Hall Financial and was unrelated to Resource Savings. [Hall Tr. 7-8; Green Tr. 47-48.]

To a large extent, Hall's partnerships had financed the above properties through savings and loan associations, many of which were located in California and Texas.[126] Throughout 1986, the outstanding debt on the above properties totaled as much as one billion dollars. [Hall Tr. 8; Green Tr. 47, 57.] One institution, Westwood Savings & Loan of Los Angeles, held Hall loans totalling approximately $200 million. [Black Tr. 28-29.]

Westwood had "participated" out the Hall loans to over 20 other savings associations. [Hall Tr. 8.] The term "loan participations" refers to the process whereby an originating lender divides a specific debtor's obligation among one or more other lenders, thereby diversifying the lead lender's risk. The lead lender sells the loan participations to the participating lenders at a discount.

In late 1985, Hall determined that the worsening regional economy threatened the ability of many of his partnerships to remain current on their mortgage note obligations. In response, in early 1986, Hall began contacting his larger lenders with the hope of restructuring the terms of the partnerships' debts. At the time of these initial contacts, none of Hall's loans were in default. [Hall Tr. 8-9.]

Hall discovered that many of the savings associations he contacted were under some form of FSLIC control. As a result, he approached the Federal Home Loan Banks of Dallas and San Francisco to begin discussing resolutions to his situation. [Hall Tr. 8-9.] On February 3, 1986, Hall met with Roy Green, president of the FHLB-Dallas, to discuss his debt service problems and the potential impact on FSLIC. [Green Tr. 48, 50.]

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[126] Although technically inaccurate, for simplicity we refer to "Hall Financial's" general partnerships as "Hall's" partnerships. As noted in the text, the corporate entity Hall Financial, rather than Hall as an individual, serves as general partner. Of course, Hall exercised control as Hall Financial's chairman.

The magnitude of Hall's possible defaults set off alarm bells at the Bank Board. Green informed the presidents of the other Federal Home Loan District Banks that Hall's empire was collapsing. [Black Tr. 26.] William Black, the Bank Board's Associate General Counsel and Director of Litigation, established an early warning system which attempted to identify those institutions which Hall's problems would likely force into conservatorship or receivership. [Black Tr. 30.]

Hall's attempts to obtain restructurings of his debts were complicated by the extraordinarily complex financial structure of his myriad partnerships and corporations. Each property had its own partnership and its own financing. Hall's situation was further complicated by the extensive loan participations. [Fairbanks Tr. 19, 21-22, 54.]

To simplify the process as much as possible, Hall sought a global restructuring plan among all his lenders. For such a restructuring to work, each creditor must agree to it. Given the large number of his creditors under FSLIC control, Hall attempted to convince the Bank Board and District Banks to negotiate on behalf of these institutions. [Black Tr. 35-36.]

Although the Bank Board was not adverse to the concept of a global restructuring, its interpretation of federal law prevented it from assuming a role as the negotiating partner for the associations under FSLIC control. According to the Bank Board, federal law provides that FSLIC operates in two capacities: corporate and fiduciary. In its corporate capacity, FSLIC is subject to Bank Board direction. In its fiduciary capacity, it is not. [Black Tr. 39-40; Fairbanks Tr. 16-17.]

Under this "FSLIC-dual-entity theory," once the Bank Board appoints FSLIC as the receiver or conservator of an association, FSLIC's fiduciary responsibilities thereafter run to that association alone. Accordingly, once appointed, the Bank Board may not instruct FSLIC-as-conservator or FSLIC-as-receiver to take a position different from that which FSLIC determines to be in the particular association's best interest. [Black Tr. 39-40; Fairbanks Tr. 16-17.] Although FSLIC as an entity is actually the conservator, FSLIC acts through an individual appointed as the conservator's Special Representative. It is this individual who must be given discretion under the FSLIC-dual-entity theory.

The FSLIC-dual-entity theory effectively prevented the Bank Board from acting as the sole representative of the many FSLIC-controlled institutions involved in the Hall negotiations. Consequently, in April 1986, the Bank Board informed Hall that it could

not provide him with a uniform restructuring agreement on behalf of the FSLIC-controlled institutions. [Exhibit F-19, ¶ 25.] Instead, Hall would have to negotiate individual agreements with each FSLIC-controlled association. The Bank Board did instruct the District Banks to encourage their member associations to "sit down and negotiate in their best interest with Hall." [Green Tr. 56-57.]

As did so many other associations in Texas and California, Westwood had suffered huge losses on speculative real estate loans.[127] As a result, FSLIC placed Westwood into a conservatorship in March 1986.[128] [Hall Tr. 18; Exhibit F-19, ¶ 19; Black Tr. 32.]

In a conservatorship, the association's stockholders maintain their equity in the association. [Gray Tr. 75.] On the other hand, the conservator has all the powers of the members, the directors, and the officers of the association, and it is authorized to operate the association in its own name or to conserve the association's assets in the manner and to the extent authorized by the Bank Board. [12 U.S.C. § 1464 (d)(6)(D).] Thus, after the conservator's appointment, the association's existing directors lose their power over the association.

As was common in such cases, and as permitted by statute, the Bank Board selected an advisory board of experienced businessmen to manage Westwood following its placement into conservatorship. [Fairbanks Tr. 23; Black Tr. 32-35; Gray Tr. 75-76.] The Special Representative also appointed an outside counsel to advise the association. The advisory board, the Special Representative, and the outside counsel all considered whether it was in Westwood's better interest to accept Hall's global restructuring plan or to initiate foreclosure proceedings. [Black Tr. 35-37; Gray Tr. 76.]

The Special Representative's outside counsel advised Westwood to work out an agreement with Hall. Shannon Fairbanks,[129] Bank Board Chief of Staff, explained that the outside counsel was a corporate attorney who had a predilection for working out business

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[127] *See* Section III. F.3.a. above for a discussion of the various conditions contributing to the thrift crisis following deregulation of savings associations in the early 1980s.

[128] Bank Board authority to place federally-insured associations in conservatorship derives from 12 U.S.C. § 1464(d)(6)(A).

[129] Fairbanks holds masters degrees in public policy and in urban planning from Columbia University. She wrote an analysis of the savings and loan industry for her masters thesis. Following her graduation from Columbia in 1979, Fairbanks worked briefly with the National Association of Securities Dealers. She left in 1980 to work for the Reagan election campaign. After the election, she accepted a position in the White House as Deputy Assistant Director for Economic Affairs for Mortgage Finance Issues. In 1983, Fairbanks left the White House to become the Bank Board's Chief of Staff. [Fairbanks Tr. 7.]

problems. Following that advice, Westwood appointed a creditors' committee to restructure Hall's loans. [Fairbanks Tr. 23.]

After the creditors' committee had worked out a restructuring plan, it was necessary to obtain agreements from all of Westwood's participating creditors. Before all the agreements were obtained, the Special Representative responsible for Westwood resigned. He was replaced by Scott Schultz, a supervisory agent for the Federal Home Loan Bank of San Francisco. Westwood's board and Schultz replaced the initial outside counsel with a litigator from the California firm of McCutchen, Black, Verleger & Shea. [Fairbanks Tr. 24-25.]

By July 1986, after a protracted series of negotiations, Hall had obtained agreements from all of Westwood's participating lenders. To obtain the last agreement, Hall agreed to add certain conditions to the standard global agreement. Westwood's advisory board, Schultz, and the new outside counsel, determined that the additional conditions were adverse to Westwood. Specifically, the conditions increased the losses which Westwood would bear under the global restructuring. [Black Tr. 36-37.]

Hall had already missed several deadlines for completing the global settlement. After reviewing the rights and responsibilities of the conservator, the outside counsel advised Westwood's advisory board that the conservatorship's creditors would be best served by foreclosing on Hall's properties and letting him go bankrupt rather than by accepting Hall's restructuring plan. The attorney advised that to do otherwise would violate the trust that had been placed on the board. [Fairbanks Tr. 27; Gray Tr. 76.]

Fairbanks related the decision to the fact that the new outside counsel was a litigator: "The man who came to the first meeting was a litigator, and litigators litigate and don't do business, work out deals." [Fairbanks Tr. 27.] According to Fairbanks, the new outside counsel reviewed the rights and responsibilities of the conservatorship and determined that it would be a violation of the Westwood board's fiduciary duty to agree to Hall's global restructuring. [*Id.* at 27-28.] Accordingly, Westwood's advisory board and Schultz decided to begin foreclosure proceedings. [Black Tr. 35.]

According to Fairbanks, the Bank Board had never before encountered the conflicts inherent in Hall's situation: significant loan participations between multiple conservatorships, receiverships, and healthy institutions, each evaluating differently the impact of the originating debtor's defaults. [Fairbanks Tr. 19, 21-22, 54.]

Throughout this period, Hall had been attempting to sell the benefits of his global restructuring plan to officials of the Bank Board

and the Federal Home Loan Banks of Dallas and San Francisco. Hall argued that forcing him into bankruptcy by foreclosing on his properties would ultimately cause many of his FSLIC-insured creditors to fail. [Green Tr. 50-51.] Hall suggested that it was in FSLIC's best interest for the institutions it controlled to agree to his restructuring plan.

Hall's arguments of systemic benefit collided head on with the Bank Board's FSLIC-dual-entity theory. Regardless of the truth of Hall's premise—that agreeing to his global restructuring plan was more economically beneficial to the system than forcing him into bankruptcy—the Bank Board officials believed they could not legally instruct Westwood's conservator to take a position which the conservator believed was contrary to Westwood's best interest. [Black Tr. 39-40.] In any event, the Bank Board officials rejected Hall's premise that FSLIC would be better off by agreeing to the global settlement. [Black Tr. 40-41.]

(b) Hall's Meetings With Wright and Other Congressmen

In early August 1986, frustrated by his lack of response from the Bank Board and District Banks, Hall and his agents began approaching various politicians to discuss his plight. [Exhibit F-19, p. 54; Black Tr. 45.] William Black testified that the Bank Board began receiving telephone calls and communications regarding Hall from a number of representatives. [Black Tr. 45.] The Bank Board responded that it could not tell conservators how to run their institutions. [*Id.*] The conservators must run the institutions in the best interest of the institutions' creditors. [*Id.*]

During August and September, Hall personally met with Wright and other Senators and Representatives, including at least two members of the House Banking Committee. [Hall Tr. 128-30.] Hall first met with Wright on September 2, 1986, in Wright's Fort Worth office. The meeting had been set up by Dr. Martin Cohen, Hall's close personal friend and physician. Dr. Cohen's uncle lives in Fort Worth and has known Wright for 35 or 40 years. According to Hall, neither Dr. Cohen nor his uncle were substantial contributors to Wright. [Hall Tr. 23, 138.]

Originally scheduled for 15 minutes, the meeting lasted for an hour and a half. Hall told his story. According to Hall, the more Wright heard of the story, the more he became concerned, interested, and upset. Wright asked Hall a lot of questions about the effects his bankruptcy would have on the Texas financial community. [Hall Tr. 140.]

Hall characterized the story he presented to Wright—and to other politicians—as "a story about an agency that was run amok, that had been out of control . . . and . . . a story of a potential and impending financial disaster that would have extreme ramifications not only to the Dallas and Texas communit[ies], but nationally as well." [Hall Tr. 140.]

Hall told Wright that his situation presented three public policy issues. First, he said that he was being forced into a major bankruptcy which he would file on October 5. He told Wright that a Kenneth Leventhal & Company report had determined that if the entire Hall organization was forced into a liquidating bankruptcy, the system, most of it FSLIC insured, would lose $724 million. Hall believes he told Wright that such an event would render 29 institutions instantly insolvent. [Hall Tr. 140-43.]

Second, Hall told Wright about his communications problems with the Bank Board. He said he had written seven letters to Gray and received only one response. In that response, Gray had set forth the Bank Board's FSLIC-dual-entity theory as the reason he could not meet with Hall. [Exhibit F-20; Hall Tr. 154.] Hall described his other unsuccessful efforts to establish communications with the Bank Board and District Banks. Hall told Wright he had heard that the Bank Board issued a "gag order" against any officials talking to him after July 25.[130] He asked Wright what a citizen had to do to get a government agency to communicate. [Hall Tr. 146-48.]

Third, Hall discussed the concerns and difficulties he saw in a citizen's trying to obtain redress from an agency such as the FSLIC. He said that the judicial processes surrounding the financial agencies are uniquely different from those surrounding other governmental agencies. Hall told Wright that his experiences with the Bank Board made him feel as if he were not in the United States. [Hall Tr. 148-49.]

Hall testified that Wright became very upset and frustrated about the situation. [Hall Tr. 151.] He made two phone calls in Hall's presence. [*Id.*] The first was to Congressman St Germain, then-Chairman of the House Banking Committee. [*Id.*] Hall overheard Wright's side of the conversation. From Wright's remarks, it appeared to Hall that Congressman St Germain was already aware of Hall's situation. [*Id.*]

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[130] In July 1986, FSLIC instituted 15 foreclosure lawsuits against Hall's properties. [Hall Tr. 105.] It is not unusual to cease communications following the initiation of litigation.

According to Hall, Wright and St Germain discussed the situation, and Wright kept saying things like, "This just doesn't seem right. Something has got to be done." [Hall Tr. 151.] Wright asked St Germain to look into it and said he wanted to talk about it when he got back to Washington. [*Id.*] Wright's second call in Hall's presence was to Congressman Tony Coelho. [Hall Tr. 151-52.] A similar conversation transpired. Hall did not know why Wright called these particular Members. [Hall Tr. 152.]

After the two telephone calls, Wright asked Hall for more information about Scott Schultz and deposition testimony Hall obtained from Schultz as a result of the FSLIC foreclosure litigation. [Hall Tr. 153-54.] As a result of that request, Hall prepared a briefing book which Wright received on September 8. [Hall Tr. 154.]

Wright's aide, John Mack, testified that he received a telephone call from Joel Jankowski, a lobbyist, seeking Wright's assistance for Hall. [Mack Tr. 63-64.] Mack testified that he told Wright Hall's story and said "perhaps we could call and see if FSLIC would rethink their situation so that the whole thing didn't come down." [Mack Tr. 64.] Mack said Wright then called Ed Gray. [*Id.*]

(c) Wright's Intervention on Hall's Behalf

Gray believed he received Wright's call sometime between his September 15 meeting in Wright's office and his subsequent private meeting with Wright on October 3. [Gray Tr. 71.] The call lasted approximately five minutes. According to Gray, Wright made him aware of his concerns regarding Hall. [Gray Tr. 78.] He specifically mentioned Scott Schultz. Wright said that Schultz was not properly informed and was not as "flexible or understanding" as he should be. Wright said he understood that Schultz had gone to a meeting and that he had been unprepared.[131] [Gray Tr. 76-77.]

Gray said that Wright "asked me if there wasn't anything I could do about this. I don't think he was probably familiar with how these things go. So I said I would look into it and see if there was anything I could do." [Gray Tr. 78.] Gray said that Wright did not threaten him or use coercive terms, but that "anybody who has worked in government for very long knows that when the Speaker—soon to be Speaker of the House of Representatives—is asking you to look into it, it's not just anybody." [Gray Tr. 80-81.]

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[131] Wright was likely referring to Hall's deposition of Schultz where Schultz testified that he had not reviewed Hall's various work-out plans in detail. [Hall Tr. 19-20.]

(d) Bank Board Response Regarding Hall

Despite the ambiguity of Wright's request that Gray "see what he could do," and the lack of a specific request, Gray was convinced that Wright wanted the Bank Board to change its position regarding Hall. Accordingly, Gray and Fairbanks decided to investigate the Hall matter and to determine what it was that Hall wanted. [Fairbanks Tr. 87.]

On September 24, Fairbanks and other Bank Board officials met with Hall to discuss his situation. This was Fairbanks' first meeting with Hall. Hall testified that he believed the meeting resulted from Wright's efforts and those of other congressmen he had contacted. [Hall Tr. 23, 124, 158; Exhibit F-19, ¶ 72; Fairbanks Tr. 82.] Following the meeting, the Bank Board issued a press release encouraging institutions involved with Hall loans to meet with him "at the earliest practical time to renew efforts to reach an agreement acceptable to all parties." [Exhibits F-21, F-19, ¶ 72.]

On September 26, Fairbanks accompanied Hall and Hall's associate to a meeting of Hall's California savings and loan creditors. Hall had scheduled the meeting to tell his creditors that he intended to file for bankruptcy on October 5. [Hall Tr. 23-24, 124, 125, 157; Exhibit F-19, ¶ 73; Fairbanks Tr. 87.]

According to Hall, on September 26, following the California meeting, he learned that Wright had placed a "hold" on the recapitalization bill. Hall testified:

> After I left that meeting, when I got to the airport [my associate], who had accompanied me on the meeting, informed me that he had received a phone call while I was speaking to the group that was from one of our Washington attorneys, informing him that the FSLIC recapitalization bill had been brought up before the House that day, which none of us were aware of was going to occur, and that Congressman Wright had in some manner held the bill up and that it appeared that it somehow related to us.

[Hall Tr. 157.] Hall said that the above conversation transpired immediately after he and his associate had dropped off Fairbanks at her airport terminal. [Hall Tr. 158.]

The Bank Board officials believed that Wright had in fact put a hold on the recapitalization bill and that the hold was linked to their treatment of Hall. [Fairbanks Tr. 30-32.] Fairbanks recalled language in the press and comments from persons in communication with Wright's office that "added money would not be given to the Bank Board because the regulators had not proved that they could

handle what they were doing." [Fairbanks Tr. 32; Exhibit F-22.] Fairbanks attributed the hold to Wright himself, not to other congressmen. [Fairbanks Tr. 30-31, 33.]

Fairbanks testified as to Gray's interpretation of Wright's request:

> Ed believed that he was being posed a choice, and the choice was: Craig Hall has a significant problem with your system; you say your system needs money, but I am not going to be prepared to give that system money unless I see evidence that your system is capable of responding; and that evidence can be provided by being responsive to Craig Hall.

[Fairbanks Tr. 40.]

According to Hall, over the weekend following the September 26 creditors meeting he spoke with his Washington attorneys about the recapitalization bill. Apparently, they had received a call from either Wright's office or the House Banking Committee. The caller requested that someone from the Hall Financial Group be present at a meeting first thing Monday morning with Paul Nelson and the Banking Committee's General Counsel[132] to discuss the issues and to see what the problems were. [Hall Tr. 159.] According to Hall, his attorney met with Nelson and the General Counsel as requested. [Hall Tr. 183.]

Following the creditors meeting on September 26, Fairbanks returned to Washington and had long meetings with Gray and the Bank Board staff. [Fairbanks Tr. 87.] Fairbanks advised Gray that regardless of whether Hall's troubled debt restructuring would benefit or hurt the system overall, it certainly would benefit Craig Hall. She argued that if it would benefit Hall, it would please Wright and get Gray what he wanted, a recapitalization bill. [Fairbanks Tr. 70-71.]

Gray and Fairbanks decided that the only way to please Wright was to obtain a restructuring for Hall. [Fairbanks Tr. 40; Black Tr. 49.] On the other hand, the Bank Board felt that under its FSLIC-dual-entity theory, it could not order the conservator to take an action which the conservator had already decided was not in Westwood's best interest. The solution was to replace Schultz with a new Special Representative. [Fairbanks Tr. 41.]

Gray decided to replace Schultz with Angelo Vigna, a highly respected official with the Federal Home Loan Bank of New York. [Gray Tr. 82.] Gray said he told Vigna "that Speaker Wright was specifically interested in this and I really felt I had to do it and I felt

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[132] At the time, Richard Still was General Counsel of the House Banking Committee.

that I would not be caving in by asking a person of very high stature in the Federal Home Loan Bank system to come out and do this." [*Id.*] Gray said that after he spoke with Vigna, he quickly called Wright to inform him of the change: "I told him we have brought in a man named Angelo Vigna and who he was, and he seemed pleased by that." [*Id.*]

Gray testified that but for Wright's request, he would not have replaced Schultz: "I would have taken some other corrective action, such as, 'You're going to have to be more communicative, listen better, be more prepared.' But no, we would not have replaced him. We just didn't replace conservators." [Gray Tr. 84.] Fairbanks concurred. [Fairbanks Tr. 42, 117-18.]

Fairbanks testified they decided to remove Schultz as Special Representative and to appoint "another person who would be perceived as neutral or acceptable in the Speaker's eyes." [Fairbanks Tr. 41.] She said that Gray instructed Vigna to disregard the outside lawyer's legal advice. [*Id.*] In fact, Vigna was told not to talk to the outside lawyer at all. [*Id.*] Instead, Gray instructed Vigna to hire a team of outsiders to determine if there was any way to build a responsible economic case in support of renegotiating Hall's loans. [*Id.*]

Although none of the Bank Board officials could recall exactly when Gray made the decision to replace Schultz [*see, e.g.*, Fairbanks Tr. 40-41], the official notice to Schultz and Vigna regarding Schultz's replacement was dated September 29, 1986.[133] [Exhibit F-23.] Since Fairbanks testified that she was still investigating the facts of the Hall matter when she accompanied him to California on Friday, September 26, the decision to remove Schultz must have been made between that date and Monday morning, September 29, when Fairbanks informed Hall of the change. [Fairbanks Tr. 86-88; Hall Tr. 25, 123-25, 158-59, 194; Black Tr. 47.] Accordingly, the decision was made following Wright's imposition of the hold—as testified to by Hall—on September 26.

According to Hall, he was concerned that Fairbanks would think that he had known about the impending hold when they met on Friday, September 26, and that he had "double-crossed" her. He planned to telephone her first thing Monday morning to explain that he had, in fact, not known. Hall recalled that before he had an opportunity to call Fairbanks on Monday morning, she called him.

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[133] Contrary to the memo to Vigna and Schultz, Black believes that Schultz retained his position as Special Representative to the Westwood conservator. He simply lost responsibility for the Hall loans. [Black Tr. 60.]

According to Hall, Fairbanks was indeed very upset until he assured her that he had no previous knowledge that the recapitalization bill was going to be held up or even that it was being brought to the floor. [Hall Tr. 158-59.]

According to Hall, Fairbanks then indicated that Schultz would agree to meet with him and that he "would be a different Schultz than [Hall] had previously experienced." [Hall Tr. 124.] Hall protested that they had unsuccessfully attempted to work with Schultz before and that he did not think that that was a likely way to resolve the situation. Hall testified that Fairbanks then put him on hold for five or ten minutes and that when she returned she said the Bank Board had held an emergency meeting and that they had decided to replace Schultz with Vigna. According to Hall, Fairbanks asked him not to make the information public for a couple of hours and that a press release would be forthcoming. [Hall Tr. 124-25, 134-35.]

Fairbanks testified that she did not recall the specific telephone call but that she had many telephone calls with Hall in order to ensure that he was satisfied with the Bank Board's actions. Fairbanks thought that Hall had collapsed the time frame of the above events. She said that under no circumstances did she call meetings of the Bank Board. [Fairbanks Tr. 86-89.]

As shown by the following testimony, Fairbanks was certain that Wright had placed a hold on the recapitalization bill in order to pressure the Bank Board:

> Q On the 29th, or before, had you concluded, and I am referring now in the generic [to] the Bank Board, in particular, Gray, that the FSLIC recapitalization bill ... was the most important piece of legislation the Bank Board had.
>
> A There is no question.
>
> Q It was the raison d'etre for their existence?
>
> A We couldn't close institutions.
>
> Q That was placed on hold by one person, Speaker of the House, James C. Wright?
>
> A That's correct.
>
> Q Was that linked in your mind with Hall not receiving some favorable treatment—
>
> A Absolutely. It was linked. I don't have any of the announcements, but my recollection is that there was language in the press as well as language to people who were to communicate to us that added money would not be given to the Bank Board because the [regulators] had not proved that they could handle what they were doing.

Q You said, and I didn't put words in your mouth here, that this hold and this relationship between Congress was one person, one Congressman?

A That's correct.

Q You are telling the chairman of the committee that the 434 other Congressmen and the 100 Senators were not the problem, is that what you are saying?

A Yes. I am not saying that other Congressmen and Senators didn't express deep concern about what was happening to people in their district or that other Senators and Congressmen didn't communicate to the Bank Board that their vote on the FSLIC recapitalization bill would have to be in the context of understanding what was being done or requiring more responsiveness on the part of the Bank Board to the concerns they had heard. But at no time was anyone in a position to exercise or at no time did anybody else exercise the ability to stand with credibility and say, "I wouldn't do this and this is what you need to do and I am not going to hear what you have to say. I want something else done."

Q This is what the Speaker was telling you?

A Yes.

[Fairbanks Tr. 31-33.]

According to the Congressional Record of Friday, September 26, 1986, the FSLIC recapitalization bill—then styled H.R. 5576, the Domestic Banking Stability and Housing Bill—was scheduled for House consideration under a suspension of the rules on Monday, September 29. [Exhibit F-6.] In fact, the bill was not considered on September 29. It was not renoticed for consideration until October 6 and was not voted on until October 7. [Exhibits F-7, F-8.] On that date, the House passed the recapitalization bill by voice vote under a suspension of the Rules. [Exhibit F-8.]

On September 30, 1986, Congressman Stan Parris (R., Va.), a member of the House Banking Committee, made the following remarks on the floor of the House:

> Mr. Speaker, H.R. 5576, the Housing Improvement and Consumer Protection Act of 1986, which contains emergency titles for our Federal Deposit Insurance funds, and the FDIC and FSLIC, *was removed from the Suspension Calendar yesterday apparently because our distinguished Majority Leader is concerned about the independent regulatory actions taken by the Bank Board in his home state of Texas....*

> Mr. Speaker, this crucial legislation was reported favorably by the Banking Committee last week on a 47-to-1 vote. This legislation is no panacea for FSLIC because it doesn't provide enough money to do the job. But it is the best plan available, and a reasonable start. It deserves our prompt consideration. Let it not be said of this Congress that we have put off till tomorrow that which we should have done yesterday. I would hope the leadership would reschedule this legislation at the earliest possible time.

[Exhibit F-24, emphasis supplied.] On October 2, 1986, Parris again took to the floor:

> Mr. Speaker, as we press toward adjournment for the year, deposit confidence in the safety and soundness of our Federal Deposit Insurance funds remains fragile. Despite the urgent need to begin to recapitalize the Federal savings and loan insurance fund and provide Federal bank regulators with the essential power to arrange buyers from ailing banks across state lines, *legislation to meet these needs has been removed from the agenda by the distinguished Majority Leader.*
>
> *The House won't consider this legislation, according to an aide to the Majority Leader who was quoted in yesterday's Wall Street Journal, until the gentleman from Texas is assured by the Bank Board that "all this money given to FSLIC won't be used to harm thrifts involved in real estate ventures."*

[Exhibit F-25, emphasis supplied.]

Parris's floor statements convincingly corroborate the Bank Board officials' testimony that the recapitalization bill had been placed "on hold" (*i.e.*, removed from the House calendar) between September 26 and 29. As further corroboration, various news articles appearing contemporaneously with the above events reported that Wright had removed the bill from consideration because he was upset over the Bank Board's handling of failed savings and loans in Texas. [Exhibit F-22; Black Tr. 90-91.] Some articles, quoting unnamed congressional sources, claimed that Wright blocked the bill to intervene on behalf of Hall. [*Id.*] They claimed that Wright had refused to move the bill until the Bank Board resolved the dispute to Hall's liking. [*Id.*]

The three members of the House Banking Committee who testified all denied recollection of a "hold" on the recapitalization bill in the 99th Congress. [St Germain Tr. 21; Barnard Tr. 36-37; Wylie Tr. 12, 13.] St Germain emphasized that the bill passed on voice vote, indicating little controversy. [St Germain Tr. 23.] Nevertheless, these views are not necessarily in conflict with a conclusion that Wright removed the bill from House consideration in order to

pressure the Bank Board regarding Hall. The Banking Committee reported the recapitalization bill to the House on September 23. Although Wright prevented the bill's scheduled consideration on September 29, it was rescheduled one week later on October 6 for consideration on October 7. The "hold" was brief and may not have been noticed. And yet, as the Bank Board officials testified, its significance to them was great.

(e) Other Congressional Inquiries to the Bank Board

According to Fairbanks, the Bank Board dealt with other congressmen differently than they did with Wright. Fairbanks explained that when other congressmen contacted the Bank Board regarding a constituent complaint, the relevant Bank Board officials would come up to the Hill to meet with the Member. The Bank Board delegation would include those agency officials most knowledgeable about the specific issue. [Fairbanks Tr. 44-45, 63.]

For example, the inquiring Member might pass along his constituent's claim that he was being ruined by the Bank Board. The Member would then ask the officials if they had any basis on which to respond. If so, the officials would do so. [Fairbanks Tr. 45, 57-58.]

Several congressmen asked about Hall. They or their staffs contacted Gray, Fairbanks, or the head of the Bank Board's legislative office. They would call and say, "we have concerns" or "we have problems about the way that Craig Hall is being treated." Thereafter, Gray, Fairbanks, and members of their staffs came up to the Hill and sat down with the Members to explain the technical issues involved. [Fairbanks Tr. 76-77.]

According to Fairbanks, one congressman was especially persistent. He asked the Bank Board to respond to what he had heard from Hall. The Bank Board brought up people from the General Counsel's office to explain the FSLIC system. They also brought up officials from the District Banks. All together, they spent at least three hours answering that congressman's questions. [Fairbanks Tr. 77.]

Fairbanks testified that Wright would not permit the Bank Board to explain its actions regarding Hall:

> [T]here was something different here. . . . [W]e wanted in the Craig Hall issues and [in] later issues to do exactly the same thing, bring the people up, talk about what is going on, because although you may not like the result in the Craig Hall issue, you can explain it, it has a beginning and an end, it has legal support

> for the way people operated. That was not what we were allowed to do in this case.

[Fairbanks Tr. 31-32.] According to Fairbanks, Wright would not permit a Bank Board response to his inquiry regarding Hall. The Bank Board asked to meet so that they could explain their actions. Wright refused. [Fairbanks Tr. 45, 58-61, 79.]

Fairbanks insisted that Wright was seeking to pressure the Bank Board to change its position regarding Hall (and, later, others): "He wasn't trying to get information. He was trying to get a result, and he was not pleased with the result he was getting, and he wanted the result changed." [Fairbanks Tr. 46-51.]

According to Fairbanks, Gray believed that Wright wanted a specific action, not an elucidation of the problem. [Fairbanks Tr. 45-46.] Fairbanks believed Wright "crossed the line." [Fairbanks Tr. 71-75.] She believed that Wright took the actions that he did because he permitted himself exposure to only one version of the facts, those of his constituent. [Fairbanks Tr. 64.]

Fairbanks believed the Bank Board was forced to compromise its standards in order to obtain recapitalization:

> [T]hroughout that whole period, we tormented, and we didn't like what we did.... [W]e felt terrible about the choices posed for us and I personally took a great deal of time to torment over the fact that from our perspective ... we [felt] we crossed a line between what we felt was permissible or not. On the other hand, ... there was a very difficult problem that we were trying to address. So I guess we—I made a judgment that I did not like doing this, but I was committed to get the bill and willing to violate what I felt was ... right in order to get the bill....
>
> That posed for me a very personal dilemma. I had spent a lot of years growing up talking theoretically about means and ends, and the end here was the ability to start to close down these institutions with adequate money. But the means was a perversion of the system and that is precisely the way we looked at it.

[Fairbanks Tr. 72-75.]

Moreover, Fairbanks had to explain to the Bank Board's enforcement staff why she and the other top officials "were doing very unusual things that did not relate to the results that they were doing as staff, but related to outside influences." [Fairbanks Tr. 62.]

Although Fairbanks acknowledged that constituents were beginning to bring pressure on Members regarding the Bank Board

treatment of their associations, she did not believe those pressures excused Wright's actions:

> You know, I grew up in Boston as an Irish Catholic Democrat. . . . And in Boston, without trying to impugn anyone's integrity, we had a certain way of getting things done. We tried . . . to get things done. So as I was growing up, you know, I'm not unfamiliar with getting things to happen, and I'm not naive about your need to be responsive to people.
>
> I guess I'm trying to be cautious in a way and careful in what I'm trying to say to you because I . . . don't believe in screening out people's concerns and not representing people. And I think that systems— . . . if they are not going to be chilly and impervious to people's needs— . . . have to be forced by human beings to be responsive to citizens.
>
> I understand the pressures that are brought to bear very well. And I think I was trying to make the point that the enormous money that was coming through on the state authority level for these state-chartered institutions generated massive amounts of pressure. But Mr. Wright was not the only one getting that pressure. Everyone in Congress was getting that pressure.

[Fairbanks Tr. 51-52.]

(f) Analysis and Conclusions

Wright's conduct in the Craig Hall matter raises difficult questions of inference and interpretation. In his appearance before the Committee, Hall presented a compelling case of what he honestly believed were unreasonable actions by and on behalf of the Bank Board. Moreover, Hall himself appeared to be a bright, hardworking, and forthright entrepreneur. It is easy to see how Wright and others were captivated by Hall and his predicament.

Despite the poignancy of Hall's presentation, his was not the only version of events. Reasonable minds differed as to the systemic effect of a decision to foreclose on Hall's properties. Certainly such a decision was adverse to Hall, but the Bank Board did not accept Hall's opinion that it was equally adverse to FSLIC. More importantly, regardless of whether the foreclosure decision was beneficial or detrimental to the system as a whole, the Bank Board had a legitimate legal basis for delegating all decision making to Westwood's conservator.

Analyzing Wright's conduct first requires an examination of what he said to the Bank Board officials. In his telephone call regarding Hall, Wright asked Gray "if there wasn't anything [he] could do about this." [Gray Tr. 76-81.] If the analysis ended there, there

would be no violation. Wright did not expressly ask Chairman Gray to do anything but look into the Hall matter. Such a request is consistent with Advisory Opinion No. 1.

On the other hand, if Wright actually intended to make an improper request, the careful wording of his request should not be determinative. The House Rules provide that:

> A Member . . . shall adhere to the spirit and the letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof.

[House Rule XLIII, clause 2.] Thus, a Member may not circumvent Advisory Opinion No. 1 by simply refraining from express statements which violate its provisions.

Despite the ambiguity of Wright's request, Chairman Gray and the other Bank Board officials were convinced that Wright intended to influence the Bank Board to revise its position regarding Hall. They further believed that Wright had held up the recapitalization bill to pressure them to do so.

In determining whether a violation occurred, the first issue is whether the evidence supports the Bank Board's factual inferences. If so, the remaining issues are whether Advisory Opinion No. 1 (1) prohibits the exertion of influence to modify a regulatory decision; or (2) prohibits the delaying of legislation to encourage a particular regulatory response.

The Bank Board officials reasonably concluded that Wright intended to influence the Bank Board to modify its position regarding Hall and, furthermore, that he delayed House consideration of the recapitalization bill to pressure it to do so. Fairbanks testified emphatically that unlike other Members with constituent complaints, Wright, his aides, or both, rebuffed attempts to meet with the Bank Board officials so that they could explain their actions regarding Hall. [Fairbanks Tr. 45, 58-61, 79.] Thus, Wright's request was plainly not an attempt to obtain information about Hall's situation or to learn the justifications for the Bank Board's response.

Second, it appears that on September 26, 1986, Wright removed the recapitalization bill from the September 29 suspension calendar to show his displeasure with the Bank Board's treatment of Hall specifically and of Texas savings and loans in general. Hall himself testified as to the nexus between the "hold" and his dispute with the Bank Board. [Hall Tr. 58.] Moreover, contemporaneous news articles quoting congressional sources corroborated Hall's and the Bank Board's testimony that the hold was related to the Bank Board's

treatment of Hall. [Exhibit F-22.] Finally, the September 26 Congressional Record shows that the recapitalization bill had been scheduled for House consideration on September 29, but, in fact, was not considered until October 7. [Exhibits F-6, F-8.]

(i) Propriety of Wright's Request

We believe that Wright's attempt to influence the Bank Board's decisions regarding Hall violated Advisory Opinion No. 1. First, a naked attempt to obtain a change in a regulatory decision without permitting any discussion of the merits is improper. As noted above, Wright was not seeking information or a status report regarding Hall's dispute. Nor was he "urging prompt consideration" or "arranging for interviews or appointments."

While the Advisory Opinion states that a Member may "express judgments," that provision is facially vague. In discussing the term, the Ethics Manual provides:

> If a Member has a strong feeling about a particular case, judgment upon the merits of the case may be expressed or argued. . . .

[Ethics Manual, 43-44.]

In addition, the Advisory Opinion expressly provides for a Member to call for reconsideration of an administrative response under certain conditions. Read together, a Member may express judgments and argue the merits of a case only *before* the agency has acted. After the agency action, a Member may "call for reconsideration."

The Advisory Opinion's "call for reconsideration" provision most closely characterizes Wright's communication and actions regarding Hall. The provision limits such calls to "administrative responses which [the Member] believes [are] not supported by established law, Federal Regulation or legislative intent." Neither Wright nor his staff gave any consideration to the legal bases for the Bank Board's actions regarding Hall. They did not ask the Bank Board for the legal basis of its decision. They certainly did not present legal arguments to the Bank Board. Rather, Wright called for reconsideration *regardless* of the legal justifications.

(ii) Observance of Required Principles

Wright's removal of the recapitalization bill from House consideration in order to pressure the Bank Board regarding Hall and Texas savings and loans also directly violated Advisory Opinion No. 1's second Principle to be Observed:

> Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.

Wright's blocking of the recapitalization bill after his call regarding Hall constituted a prohibited suggestion of reprisal in advance of action taken by the agency. Indeed, it had the effect of forcing the Bank Board to change its response in the Hall matter. As noted in Section III. F.2 above, Senator Douglas likened pressure through hostile action in budgets or legislation to blackmail. Wright's imposition of the hold in connection with the Bank Board's response to Hall constituted a clear violation of the House Rules as interpreted under Advisory Opinion No. 1 and its Principles to be Observed.

(3) General Meeting of October 3, 1986

On Friday, October 3, 1986, Wright met privately with Gray at Gray's request. Gray did most of the speaking during the thirty-minute meeting. He explained to Wright how the Bank Board's regulatory system worked and the problems which had arisen since deregulation. He expressed the Bank Board's desperation regarding the FSLIC fund's impending insolvency. Gray told Wright that FSLIC held only $2 billion to cover $900 billion in insured deposits. Gray said Wright appeared stunned. [Gray Tr. 70, 113-17; Gray II Tr. 74.]

Gray told Wright that the Bank Board did not have enough examiners. He also told him that some people had come into the industry who did not deserve to be running savings and loans. Gray said that the Bank Board needed the FSLIC money to address that problem. Gray told Wright that the Bank Board needed his support. [Gray Tr. 70, 113-17; Gray II Tr. 74.]

After Gray finished, Wright thanked him for coming. Gray did not recall Wright asking about any specific cases pending before the Bank Board. Nor did he comment on the recapitalization bill or its progress through Congress. [Gray Tr. 118.] Gray told Wright that he was so concerned about the FSLIC problem that Wright could call him whenever he needed to so that he could help Wright understand what the Bank Board was trying to do and why. [Gray Tr. 118.] Gray said that Wright could have taken this comment as an invitation to call about anything. [Gray Tr. 123.]

(a) Analysis and Conclusions

This meeting represented an appropriate exchange of information between a Member and an agency head. The House Rules, as

interpreted by Advisory Opinion No. 1, permit Members to request information or status reports. Gray requested the meeting and Wright did little more than listen. Wright's conduct was completely appropriate and in accordance with the House Rules.

(4) Correspondence Regarding J. Scott Mann

(a) Mann's Bank Board Dispute

On October 7, 1986, J. Scott Mann III, an Austin, Texas, savings and loan operator, wrote to Wright regarding the alleged mistreatment by Bank Board examiners of his savings and loan, CreditBanc Savings Association. [Exhibit F-22.] In his letter, Mann referred to his October 6 meeting with Wright:

> At our meeting yesterday afternoon, you stated that last Friday Chairman Edwin Gray of the Federal Home Loan Bank Board had given you firm assurances that savings and loan associations located in the state of Texas are not being targeted for discriminatory treatment by the ... Bank Board, that investors are not being ousted from control of their institutions without proper procedures, that the funding provided by the [FSLIC] recapitalization legislation would not be used to close large numbers of Texas institutions, that Texas financial institutions would be given a preference in buying any failed Texas thrift institutions, and that the ... Bank Board is not prohibiting Texas thrifts from financing local real estate projects.
>
> I appreciate that it may take time to communicate policy decisions made in Washington by the Chairman of the ... Bank Board to Bank Board personnel operating through the [FHLB-Dallas]. However, I am providing you with the following information to document for you the extent to which the very practices that Gray assured were not existent are and continue to be prevalent in the Ninth ... District.

[Exhibit F-26.]

Mann's letter set forth a litany of instances of mistreatment: He claimed that an examiner from the FHLB-Chicago had used abusive language, that the FHLB-Dallas was predicating its supervisory posture on erroneous information, that the FHLB-Dallas was attempting to preempt state regulatory officials, and that the FHLB-Dallas was attempting to force CreditBanc into signing various unwarranted supervisory agreements. [*Id.*]

(b) Wright's Intervention on Behalf of Mann

Wright forwarded Mann's letter to Gray. In his cover letter, Wright referred to Mann's letter as "detailing some very in-

appropriate actions by regulators under your jurisdiction." [Exhibit F-27.] He continued:

> These are the kinds of things of which I've been hearing verbally from other sources, things that undermine the public's faith in government and public officials. This is only one of many such accounts I have received since our discussions have come to the public's attention. *I certainly would appreciate your checking on the situations described and letting me know the results of your inquiry and actions.*
>
> I am particularly concerned about the methods described in incident II, demanding the signing of the documents therein described. This kind of high-handed and arbitrary attitude can only create fear, mistrust and a climate of great instability. Also, of course, the very arbitrary actions and threats described in III would seem clearly outside the realm of acceptable regulatory behavior.
>
> What it all comes down to is a question of basic attitude. Some in the regulatory force seem not to understand the fundamental principle that it is government's aim and objective to save legitimate businesses, not to destroy them.
>
> While I understand that, as you have said, you cannot monitor every action taken by every arm of the FHLBB, I feel sure you appreciate how incidents of this type herein reported breed widespread discontent and how very important it is to restore confidence in the system among the industry.
>
> It is a hopeful sign that you have taken the time to listen to the problems we are having in Texas and I appreciate your candor in our discussions. I look forward to hearing that conditions have improved as a result of your direct personal involvement.
>
> Thank you for your attention, and best wishes.
>
> Sincerely,
>
> /s/ Jim Wright

[Exhibit F-27; *see also* Gray Tr. 139, 149.]

(c) Bank Board Response Regarding Mann

Following his receipt of Wright's letter, Gray initiated an investigation of Mann's charges. [Gray Tr. 139, 149-51, 157-59; Exhibit F-28.] The investigation showed that CreditBanc Savings had committed serious regulatory violations and was in a precarious financial condition. [*Id.*]

On February 23, 1987, following his investigation, Gray responded to Wright's letter and explained his findings. [Exhibit F-29; Gray Tr. 139.] Gray testified that he thought the Bank Board took too long to respond to Wright's letter. He said they "had so many problems at the time that the staff probably didn't give as great a priority to getting this back as I would have liked." [Gray Tr. 139.]

(d) Analysis and Conclusions

Wright's intercession on behalf of a constituent who expressed a complaint about a federal agency was appropriate under the House Rules as interpreted by Advisory Opinion No. 1. Despite Wright's strong language, and his expression of hope for "improved" regulatory conditions, his letter merely requested Gray to investigate Mann's charges. Advisory Opinion No. 1 expressly provides that it is appropriate for a Member to request information or a status report. We believe that Wright's request was proper.

(5) Telephone Call Regarding Thomas M. Gaubert

In early November, 1986, Wright telephoned Chairman Gray regarding Thomas M. Gaubert of Independent American Savings Association. [Gray Tr. 123-26; Fairbanks Tr. 103-14.] At the time of the call, the FSLIC recapitalization bill was in limbo. The 99th Congress had adjourned on October 18 before the bill could be conferenced.[134] [Black Tr. 89.] Nevertheless, the Bank Board officials knew that the bill would be immediately reintroduced when Congress reconvened in January. Its passage was considered increasingly critical: FSLIC's reserves were down to approximately $3 billion in liquid assets. [Black Tr. 89.]

(a) Gaubert's Bank Board Dispute

Independent American was a Texas-chartered association with its main office in Irving, Texas, a Dallas suburb. [Exhibit F-30, p. 1.] Gaubert acquired a controlling interest in Independent American in October 1982. Gaubert had been a real estate developer prior to the acquisition. [*Id.*, p. 2.] Gaubert operated Independent American until December 1984, when he voluntarily agreed to temporarily remove himself from management. [*Id.*] At the time of Gaubert's acquisition, the association's assets totaled less than $40 million. [*Id.*]

As of November 30, 1986, around the time of Wright's intervention, Independent American was grossly insolvent. Its $1.538 billion in liabilities exceeded its $1.084 billion in assets by $454 million. [*Id.* at

[134] See Section III. F.3.a.(3)(a) above.

1.] Between September and November, 1986, Independent American's monthly operating losses averaged between $8 and $10 million. [*Id.*]

Independent American's independent auditors noted in their September, 1983, report that Gaubert had engaged in several related-party transactions. [*Id.* at 6.] The Bank Board's 1984 examination report revealed that Independent American's management and board had engaged in several major areas of regulatory violations and unsafe or unsound practices. [*Id.* at 7.]

In 1984, the Bank Board examined an association located in Mt. Pleasant, Iowa, named Capitol Savings & Loan. That examination revealed loans from Capitol to Gaubert and entities under his control totalling over $65 million. [*Id.* at 15.] As of April, 1984, all of the loans were delinquent. [*Id.*] The examiners determined that Gaubert may have engaged in a significant land flip in connection with his Capitol Savings transactions. [Black Tr. 65.] The information developed in the Capitol examination prompted the FHLB-Dallas to recommend that the Bank Board remove Gaubert from his position at Independent American. [Exhibit F-30, p. 16.]

In October 1984, the Bank Board's Office of Enforcement and Supervision approved the FHLB-Dallas's recommendation that Gaubert be removed from the chairmanship of Independent American. [*Id.*, p. 16.] In December 1984, Gaubert and FSLIC executed an agreement which severely restricted his involvement in Independent American's operations while the Bank Board investigated the Capitol Savings transactions. [*Id.*, p. 16-17; Black Tr. 83.]

As a result of that investigation, the Bank Board determined in August 1985 that Gaubert should be permanently removed from Independent American and the industry. [Exhibit F-30, p. 17.] In January 1986, the Bank Board and Gaubert entered into an agreement prohibiting him from operating any FSLIC-insured associations. [Exhibits F-30, F-31; Black Tr. 84.]

At some time after entering the 1986 agreement removing him from the industry, Gaubert began seeking to have that agreement rescinded. [Black Tr. 84-85.] He alleged that he had been unfairly pressured to enter the agreement by Rosemary Stewart, Director of the Bank Board's Office of Enforcement. [Black Tr. 85.] Accordingly, he argued that the agreement was invalid. [Green Tr. 59-62.]

Shannon Fairbanks summarized Gaubert's Bank Board dispute as follows:

Tom Gaubert ... had had dealings with small, ultimately defunct institutions [in Mt. Pleasant, Iowa.] Those were the ones we could close easily because they didn't cost as much money. When that institution was closed, our enforcement attorney reviewed the data involved in the closure of this defunct institution and found very troublesome loan arrangements involving land flips ... Piercing that through, they got back to the person who was making representations to the S&L in Mt. Pleasant, Iowa. They then went after him. His name was Tom Gaubert. It happened that Mr. Gaubert was not just another person.

As we understood it, Mr. Gaubert was a major fundraiser for the Democratic Party and as he later represented to us, he was very close to Mr. Wright and to Mr. Coelho....

Mr. Gaubert ... was at the time the owner and president of Independent American S&L in Texas. Because he was found to have been involved in this fraudulent series of dealings with the now [defunct] S&L in Iowa, the Enforcement Division lawyers went to Dallas and recommended ...:

"We will pursue this further. There is very troublesome information that we have of Mr. Gaubert's dealings with a now-dead S&L. We believe there is ... cause for a removal of Mr. Gaubert while we pursue this matter more fully. If at the end of that time Mr. Gaubert is cleansed of any assumed involvement in what appears to be very fraudulent loans, then he can be reinstated to his institution. If, however, the investigation proceeds as we think it will, then we have to bar him ... totally from operating at this insured S&L."

The people in the Dallas Bank ... brought in Mr. Gaubert. Mr. Gaubert was represented by counsel. And Mr. Gaubert signed an order of removal from ... his association, during which time an investigation would proceed.... This is all prior to Mr. Wright's involvement.

At the end of that investigation, the Enforcement Division ... said, "This is a man who has been so deeply the cause of loss at another institution, he needs to be barred from going back to his own institution." Mr. Gaubert was again represented by counsel, and he signed a removal order at that time, so he was now permanently barred from being at the institution. However, he still [had] his ownership [interest] ... which [was] worth $20 or $30 million if [the institution] had been at full speed, which it was not.

> In October of 1986, based on enormous deterioration of the loan portfolio at Independent American Bank in Texas, the [FHLB-Dallas] supervisory people recommended a takeover of the bank, a receivership. Now remember, we weren't taking a whole lot of institutions over in receivership actions because we couldn't afford to, so the recommendation by the Dallas Bank to take over Independent American Bank was [significant]. [It] was such a seriously gone institution that they felt that it was critical to take it over.... We couldn't afford to do more than a couple. Basically, it was one of the worst.
>
> That recommendation triggered—and now I am supplying my own editorial comment here— triggered Mr. Gaubert's turning up the heat on Mr. Wright, Mr. Wright calling Mr. Gray, and Mr. Gray's determination of an initial unwillingness to respond.

[Fairbanks Tr. 107-11.]

In his testimony, Wright admitted that he knew Gaubert. [Wright Tr. 51.] According to Wright, Gaubert told him the following:

> I have 44 savings and loan institutions here, I and other investors. These guys have come and kicked me out. They said one day, pick up your things and leave. You're no longer managing this savings and loan institution. It is my money and the money of my investors, put together, but they made me leave.

[Wright Tr. 51.] Wright said Gaubert further told him that the government had been mismanaging his association and that the association had been losing money ever since the government took it over. [Wright Tr. 52.]

Wright said he suggested to Gaubert that he take his complaint to Ed Gray. [Wright Tr. 52.] According to Wright, Gaubert said that he tried to speak with Gray but that Gray would not see him. [Wright Tr. 52.] Gaubert told Wright that he thought the Bank Board's actions were illegal. [Wright Tr. 52.] Wright testified that he then told Gaubert that he would talk to Gray to see if Gray would hear Gaubert's story. [Wright Tr. 52.]

(b) Gaubert's Political Connections

As noted above, at the time of Wright's telephone call regarding Gaubert, Gaubert was a Democratic fundraiser. Specifically, he was Treasurer of the Democratic Congressional Campaign Committee ("DCCC"). [Black Tr. 84; *see* Gray II Tr. 22.] The DCCC collects campaign contributions for the benefit of Democratic Members of Congress. At the time, Representative Tony Coelho, now House Majority Whip, chaired the DCCC.

In addition to his role with the DCCC, Gaubert was a friend of Phil Duncan, one of Wright's aides. [Mack Tr. 93-94.] Federal Election Commission records show that Gaubert contributed $2,000 to the Wright Appreciation Committee in 1985. [Exhibit F-32.]

(c) Wright's Intervention on Behalf of Gaubert

According to Gray, in Wright's November 1986, telephone conversation regarding Gaubert, Wright said that "his friend, Tom Gaubert," had complained to him that he had been "mistreated" by the Bank Board. [Gray Tr. 123.] Gray said that Wright seemed familiar with the main points of Gaubert's complaint. [*Id.*] He told Gray that Gaubert had been removed from his position at Independent American. [Gray Tr. 126.] Wright said he felt that Gaubert had not been treated fairly and that Gray was not getting the whole story from the Bank Board staff. [Gray Tr. 123, 126.] Wright said he wanted Gray to meet with Gaubert personally so that Gray could hear Gaubert's side of the story. [Gray Tr. 123, 126.]

Wright testified that the conversation transpired as follows:

> I called Ed Gray. I said, "Ed Gray, Tom Gaubert." He said, "Yes, I know of him." I said, "Do you know the circumstances surrounding his situation?" He said, "No." I said, "He claims what legal counsel has advised him, what has been done to him is unlawful, usurped power that wasn't rightfully that of the Bank Board, and taken over his property. That's what he claims. I don't know the answer to it. He claims the people who took it over are running it in the ground, losing money. Would you hear him? Would you let him come talk to you?" He said, "Yes." So that was exactly what I did with regard to Tom Gaubert. I asked an audience.

[Wright Tr. 53.]

Fairbanks testified that the Bank Board had an absolutely rigid rule that the Chairman could not meet with the subjects of disputes where the Chairman sat as judge. If the Chairman did so meet, he had to disqualify himself from future decisions relating to that disputant. [Fairbanks Tr. 103, 118.] Accordingly, when Wright asked Gray to meet with Gaubert, Gray emphatically protested that "as a matter of practice, he didn't do that." [Gray Tr. 123, 127.] Gray told Wright that he did not meet with parties to actions or transactions before the Bank Board. [*Id.*] Instead, such parties always met with Gray's staff.[135] [Gray Tr. 123, 127; Fairbanks Tr. 103, 118.]

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[135] Although Gray testified that his practice of not meeting with parties to an action or a transaction with the Bank Board was on the advice of counsel, the record is unclear whether he communicated that fact to Wright. [Gray Tr. 127]

According to Gray, Wright responded that Gray's staff was apparently giving Gray wrong information and that Gray should meet with Gaubert anyway. [Gray Tr. 124.] Gray testified that he agreed to meet with Gaubert because "our [FSLIC] situation was worsening day by day, and I felt that making that accommodation to Jim Wright was important under the circumstances." [Gray Tr. 124, 126, 127; Black Tr. 64.]

Shortly after the call, Gray told his special assistant, Mary Ellen Taylor, about Wright's request. Taylor testified that Wright's request was unusual because other members did not demand that their constituents be given access to the chairman. [Taylor Tr. 39.]

As discussed below, Gray ultimately decided to appoint an independent counsel to investigate Gaubert's treatment by the Bank Board. Gray testified that he took this step "because Speaker Wright had the power to stop and kill our FSLIC recap legislation." [Gray Tr. 136.] Although Wright did not expressly ask Gray to make any changes in regulatory decisions other than meeting with Gaubert, Gray believed that Wright was actually seeking more: "I have been in government long enough to know that you don't have to ask the question explicitly to know what the message is, and I knew what the message was." [Gray Tr. 136; Black Tr. 148.]

Fairbanks testified as to why the Bank Board officials believed that Wright was seeking not just a meeting, but a change in the Bank Board's regulatory response to Gaubert:

> I remember very distinctly that Ed [Gray] specifically asked the Speaker if he would like the director of enforcement and any [other] relevant people to come up [to the Hill] and lay out why this man named Mr. Gaubert was going to be—was now—the subject of an enforcement action. The answer was no. What was required and wanted instead was a hearing for Mr. Gaubert. Again, it wasn't "let me find out more information so I can evaluate." It [was] "there is a result that [we] desire to be different."

[Fairbanks Tr. 104-05.] Fairbanks insisted that Wright's request was very different from those of other Members:

> It was absolutely different. There is absolutely no question. And, in part, I can't believe that in my heart of hearts that there may not have been others who at times would like to have been able to be able to do something like this in order to compel a result. But I have never had any situation either at the time I was at the White House or at the entire time I was at the Bank Board where someone who had the ability to hold a club, use that club very

> directly on behalf of individuals in order to compel different results than had been taken.

[Fairbanks Tr. 105-06.]

Gray believed that Wright's intervention on behalf of Gaubert was improper:

> My impressions were that he was interfering with the regulatory process on behalf of friends, and I thought this was a violation of his job as one of the highest ranking Members in the United States Government.

[Gray Tr. 153.] Gray said that he often received calls from Members about constituents' applications and problems, but never a call like Wright's on behalf of a personal friend. Although he had spoken with committee chairmen, he had never received a call from the Speaker of the United States House of Representatives prior to September 1986. [Gray Tr. 140-41.]

Fairbanks explained why Wright's insistence that Gray meet with Gaubert was injurious to the Bank Board:

> One of the very important tools that the Chairman of the Bank Board had, lacking many other tools, was to at least take the enforcement ability of the Bank Board and heighten its responsibilities. To do that, he did something he didn't have to go to Congress to ask permission for. He ... took the enforcement division, which was simply a division at the Bank Board, and made it a separate office, [thereby increasing its stature within the system.] [That move] signaled we mean business when we have our enforcement people go out. They will have the full weight of the Bank Board behind them. They are not just a lower group of people.
>
> Having done that, the person who was made the Director of the Office of Enforcement [Rosemary Stewart] was given very personal authority on behalf of the Chairman to be aggressive about what was perceived to be a very dire need to bear down on some of the fraudulent acts that were going on out in the industry. [The] Craig Hall [issue] ... didn't speak to the heart of this enforcement issue at all. [The] Tom Gaubert [issue] did.
>
> * * *
>
> [The Office of Enforcement decided it was critical that Independent American be placed in receivership.] It was then a call from Mr. Wright [came in] that he wanted a private meeting between Mr. Gaubert and Ed. He did not want the Director of Enforcement [Rosemary Stewart] there, so the private meeting was held.

> I am saying that lightly, but that was not lightly done. What it did was signal to our own Enforcement Division, all of our enforcement attorneys, that [although] a process had been worked through very carefully for ... [resolving enforcement matters], someone was going outside the process and coming directly to the Chairman. And the Enforcement Division could not even be present to counter what was being said.

[Fairbanks Tr. 107-12.]

(d) Bank Board Response Regarding Gaubert

Prior to Gray's meeting with Gaubert, Fairbanks met with Gaubert and his attorneys:

> I met with two lawyers and Mr. Gaubert. Mr. Gaubert is a very compelling person. He felt that he had never done anything wrong, that he had operated as a businessman, and that there were unnecessary restraints on his decision-making that had been imposed, that people didn't understand the business decisions he had made, and that he had been wrongfully dealt with.
>
> By the same token, with advice of counsel, he had chosen twice to sign a removal order. Our sense was that you don't walk out of an institution you have owned for no reason at all. But whether he had a reason or not, the fact is ... that our own enforcement people had pursued this issue [and] they believed and had documented a pattern of land flips and fraud .... None of this had been proved in a court of law, but it is as solid a finding as you were going to find.

[Fairbanks Tr. 111-12.] Thereafter, Gray and Fairbanks met with Gaubert for two and one-half hours.[136] [Gray Tr. 127-29; Fairbanks Tr. 101; Black Tr. 64, 86.] Gray testified that "the story" he got from Gaubert was "180 degrees opposite" the story he got from his staff. [Gray Tr. 128.]

Gray and Fairbanks decided that Gaubert, and thereby Wright, would be satisfied if they conducted a review of the Enforcement Division's actions regarding Gaubert. [Gray Tr. 127-29; Fairbanks Tr. 102; Black Tr. 64.] Gray explained his rationale for this decision as follows:

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[136] The Speaker's telephone call with Gray, and Gray's subsequent meeting with Gaubert, must have occurred on or before November 19, 1986. An interoffice memorandum of that date from Rosemary Stewart, Bank Board Director of Enforcement, to Shannon Fairbanks, Bank Board Chief of Staff, discusses the Speaker's interest in Gaubert's case and the possibility of an investigation of Gaubert's complaints. [Exhibit F-33.]

> It is not because I did not have confidence in my staff. I did. But I was concerned under the circumstances that in Jim Wright's mind, there was no credibility whatsoever based on what I told him about our dealings with Tom Gaubert or generally with the regulation of institutions in Texas.
>
> Anyway, . . . for me to go back and say—"Okay. I have listened to him and that is it"—when we were trying to get a bill passed, I felt was not enough, . . . even though I had no reason to doubt the case and the reasons why the regulators had acted as they did with respect to Tom Gaubert.
>
> However, we had to have passage of the legislation and I had . . . Jim Wright making it clear that I was to talk to his friend, his buddy.

[Gray Tr. 128.]

The Bank Board officials believed they had to find a review procedure which Wright could believe produced credible results. [Gray Tr. 129; Black Tr. 64, 87.] They considered entrusting the review to (1) the Bank Board's general counsel; (2) another Federal Home Loan District Bank; or (3) an inspector general from one of the other federal banking agencies. [Fairbanks Tr. 112-13.] They rejected the first two possibilities as not being sufficiently credible to Wright. [Black Tr. 88.] Although Gray pursued the third option during December, 1986, or January, 1987, the other banking agencies refused to participate. [Fairbanks Tr. 113; Gray Tr. 130-31; Black Tr. 94.]

As an alternative, Gray decided to appoint an independent counsel acceptable to Gaubert. [Gray Tr. 130-34; 34; Fairbanks Tr. 113; Black Tr. 64, 86-87, 94.] According to the Bank Board officials, the appointment of the independent counsel was extremely unusual, even extraordinary. [Gray Tr. 135; Black Tr. 88.] Neither Fairbanks nor Black knew of any precedent where a government agency appointed an independent counsel to investigate its own actions. [Fairbanks Tr. 103; Black Tr. 89.] Gray testified that but for his perception of Wright's influence on the recapitalization bill, he would not have appointed the independent counsel. [Gray Tr. 135-36, 153, 160-62; Fairbanks Tr. 114; Black Tr. 88, 94; Taylor Tr. 39-40.]

In January 1987, prior to the independent counsel's appointment, the FHLB-Dallas recommended placing Independent American into receivership. [Exhibit F-34.] In its report, the FHLB-Dallas examiners noted that Independent American "has committed numerous regulatory violations and has engaged in a pattern of unsafe and unsound practices that have resulted in the substantial dissipation of the Association's assets." [*Id.*, p. 952.]

Despite the FHLB-Dallas's strong receivership recommendation, the Bank Board decided to withhold action on Independent American until after the independent counsel completed its investigation. [Fairbanks Tr. 113.] Placing Independent American into receivership would extinguish Gaubert's economic interest. [*Id.* at 114.]

The selection of the independent counsel occurred during January 1987. Black created one list of candidates and Gaubert's attorney created another. [Black Tr. 87.] According to Black, his list consisted of commercial law firms and Gaubert's consisted of political law firms (i.e., lobbyists). [*Id.*] The Bank Board selected the outside counsel from Gaubert's list. [*Id.*]

On February 2, 1987, FSLIC retained Aubrey Harwell of Neal & Harwell, Nashville, Tennessee, to conduct the investigation. [Black Tr. 88; Exhibit F-35, pp. 1-3.] Harwell was to determine whether the agreements between Gaubert and FSLIC resulted from unlawful, improper, or unfair conduct by FSLIC representatives. [Exhibit F-35, pp. 1-3.]

According to Gray, on January 1, 1987, prior to the independent counsel's appointment, Gaubert called Gray at his home in California. Gray testified that his number was unlisted, but that he had given his home number to John Mack when they spoke about Vernon Savings around Christmas.[137] When Gray asked how Gaubert got his number, Gaubert said, "never mind." [Gray II Tr. 17; Taylor Tr. 42.]

According to Gray, Gaubert said he was calling to tell Gray "that the people you have running my institution are a bunch of criminals and I want to put you on notice that I am going to get rid of those criminals." Gray said, "I'm sorry, Mr. Gaubert. I have to leave. Thank you very much." Gray said he then hung up. [Gray II Tr. 17-18.]

Gaubert testified to a significantly different conversation. [Gaubert Tr. 45-50.] According to Gaubert, he and Gray had "a very cooperative and cordial relationship at that time." [Gaubert Tr. 49.] He admitted he called Gray at home, but said he called because he had been sued by Independent American's board. [*Id.* at 46.] According to Gaubert, Gray had told him no action would be taken by the FHLB-Dallas until the independent investigation was completed. [*Id.*] Gaubert testified that Gray responded by saying that the Bank Board did not control Independent American's board. [*Id.*] Gaubert

[137] See Section III. F.3.c.(7)(c) for a discussion of Wright's December telephone call regarding Vernon Savings & Loan and Don Dixon.

said he responded that the board was composed of "the hand-picked former employees and cronies of the [FHLB-Dallas]. . . ." [*Id.*] Gray responded that, nevertheless, the board was independent. [*Id.* at 47.]

According to Gaubert, he and Gray then discussed the format of the independent investigation of his charges against the Bank Board. [*Id.* at 47-49.] Gaubert claimed the call ended cordially. [*Id.* at 49.]

On April 21, 1987, Independent Counsel Aubrey Harwell issued his report regarding the Bank Board's treatment of Gaubert. [Gray Tr. 132-134; Exhibit F-35.] Gray interpreted the report as concluding that the Bank Board acted properly in most respects. [Gray II Tr. 28-30.] Fairbanks recalled that the report concluded there had been no abrogation of Gaubert's constitutional rights by the Bank Board. [Fairbanks Tr. 102.] According to Black, the report criticized some procedural matters but it found no basis for Gaubert's charge that he was singled out for unfair treatment. [Black Tr. 95.] Black said that Harwell orally indicated that the Office of Enforcement had not done a good enough job of investigating and that a case was there to be made on the Capitol Savings land flip. [Black Tr. 96.]

In his report Harwell concluded that "there was not any illegal conduct [on the part of FSLIC or the Bank Board], insofar as illegal means any clear and convincing violation of statute or regulation." [Exhibit F-35, p. 175.] He further concluded that:

> there is no basis for Gaubert's claim that the FHLB-Dallas improperly took over [Independent American] or purposefully or negligently caused the net worth of [Independent American] to decline.

[Exhibit F-35, p. 176.] On the other hand, Harwell noted several instances of conduct in the Bank Board's course of dealing with Gaubert which he considered unfair or improper. [Exhibit F-35, pp. 175-81.] Nevertheless, Harwell placed some of the blame on Gaubert for relying on representations against the advice of counsel. [Exhibit F-35, p. 178.]

Black criticized the Bank Board's decision to appoint an independent counsel to accommodate Wright's concerns. First, it ignored the Bank Board's established mechanism for addressing charges of arbitrary or unfair behavior: investigation by the Bank Board's Inspector General. [Black Tr. 92.] That mechanism treats the Bank Board as a legitimate organization that has remedies to investigate allegations of abuse. [*Id.*] Second, the appointment of an independent counsel was expensive. Black believed that the expenditure was an unnecessary waste of taxpayer funds. [Black Tr. 92.] Third, the independent

counsel's investigation was time consuming because he had to familiarize himself with the Federal Home Loan Bank System. [*Id.*] Fourth, Black questioned the investigation's results because Harwell did not understand the Federal Home Loan Bank System. [*Id.*] Finally, Black was concerned that the appointment of the independent counsel may have exposed Gray to claims that he was making "special deals." [Black Tr. 93.]

Following his telephone call regarding Gaubert, Wright continued to express interest in the Bank Board's treatment of Independent American. On January 22, 1987, Chairman Gray testified regarding the recapitalization bill (now styled H.R. 27) in a public hearing before the House Banking Committee. [*FSLIC Recapitalization Act (H.R. 27), Hearings Before the Committee on Banking, Finance and Urban Affairs*, 100th Cong., 1st Sess., No. 100-1 (Jan. 22, 1987).] During Gray's testimony, Congressman Barnard asked him questions about Independent American and Vernon Savings & Loan:

> Mr. Barnard. Mr. Gray, there have been some questions that individual home loan banks have been overly rigourous [sic] and arbitrary in their supervisory actions, including the closing of certain savings and loans. For example, in Texas, people are especially concerned over situations like Vernon Savings & Loan and Independent American Savings and Loan. I have two questions. First, what does the Bank Board do to monitor these situations?
>
> Mr. Gray. All Right, that is the first one. I don't normally talk about individual institutions and I am not sure you want me to. Do you want me to talk to—
>
> Mr. Barnard. It has been in the press.
>
> Mr. Gray. Well, in both cases we are talking about severe difficulties and insolvency and it is severe. In the hundreds of millions of dollars. . . .

[*Id.* at 430; *see also* Gray Tr. 161-62; Gray II Tr. 13-14, 16, 80; Barnard Tr. 39-45; Fairbanks Tr. 123; Black Tr. 107.]

Barnard testified that a Wright staff person had requested that he ask the question: "there appeared on my desk a question that I was asked to ask Gray pertaining to Independent American . . . and Vernon. That question appeared on my desk, and I asked it." [Barnard Tr. 39-41.]

When the Bank Board officials learned that Wright's office had requested Barnard to ask certain questions, they believed that request demonstrated Wright's "intense" interest in Independent American and Vernon. [Gray II Tr. 12-13, 16; Black Tr. 110.] They

found it especially significant because they testified that Members do not ordinarily mention the names of troubled institutions in open session. [Black Tr. 110.] Gray testified as follows:

> [N]ormally in hearings of the House Banking Committee, one gets *policy questions*, but not questions about individual institutions. It seemed extremely unusual to me . . . to be getting a question about two institutions in Texas . . . .
>
> I think the record of what was said makes clear the unusual nature of the question. Anybody who has followed these kinds of hearings knows . . . that this is very strange. Before the hearing was even over, Congressman Barnard or one of his immediate assistants had talked to my assistant, Mary Ellen Taylor, and said to her very apologetically that he was really sorry he had to ask those questions, but he had to do it because the Speaker had told him he had to do it.

[Gray II Tr. 13-14.]

On the other hand, Barnard testified that institutions' names have been mentioned "time and time and time again." [Barnard Tr. 36.] He said there has never been any hesitancy about mentioning the names of institutions, those who have failed and those who are having difficulty, either before or after regulatory action. [*Id.*] In any event, Barnard testified that he did not feel the requested question was improper. [Barnard Tr. 41.] He admitted, however, that he would not have asked the question if he had not been asked to do so. [Barnard Tr. 42.]

Although the Bank Board viewed Gray's agreement to meet with Gaubert and the appointment of the independent counsel as significant concessions to Wright, Wright was apparently not satisfied. On several occasions, he referred to the result of his intervention on behalf of Gaubert as unsatisfactory. For example, in his testimony before the Committee, Wright described the result as follows:

> So . . . with regard to Tom Gaubert[,] I asked an audience. *That didn't turn out as well as the first one* [*i.e.*, the Craig Hall intervention]. As I recall, he did have an audience. Chairman Gray appointed somebody to look into it, and this guy did conclude that there had . . . been a usurpation of authority, illegal, to take it over and take away from him. But it wasn't cured because they said Tom had done some other things he shouldn't have done.

[Wright Tr. 53 (emphasis supplied).] Likewise, according to William Black, in a February 10, 1987, meeting described in Section III. F.3.c.(8) below, Wright referred to his interventions on behalf of

Hall, Gaubert, and Don Dixon.[138] [Black Tr. 126.] Black testified that Wright said:

> I have gotten involved in three things, and the first one [*i.e.*, Craig Hall] was handled very satisfactorily, worked out very well.... That worked out real good. I talked to the Chairman and we were able to work all that out.... *But the other two have been extremely unsatisfactory.*

[Black Tr. 126-27 (emphasis supplied).]

(e) Later Judicial Proceedings

On December 24, 1987, Gaubert filed suit against Gray, Fairbanks, Black, and others in the U.S. District Court for the District of Columbia. [Black Tr. 94.] That suit remains pending. On March 17, 1988, a federal grand jury sitting in the Southern District of Iowa indicted Gaubert on charges relating to alleged land flips at Capitol Savings. [Exhibit F-36.] On October 29, 1988, following a trial in the United States District Court, a jury acquitted Gaubert on all counts. [Exhibit F-37.]

(f) Analysis and Conclusions

On its face, Wright's request that Chairman Gray meet with Gaubert falls within a permissible communication set forth in Advisory Opinion No. 1:

> [A] Member ... may properly communicate with an ... Agency on any matter to: ... arrange for interviews or appointments.

The evidence received by the Committee presents two issues. First, whether Wright's insistence that Chairman Gray meet with Gaubert in the face of Gray's protests exceeded the bounds of proper representation. Second, whether Wright actually intended to influence a change in Bank Board position and not merely to arrange a meeting.

We believe that Wright's insistence that Gray meet with Gaubert in the face of Gray's protests that such a meeting violated the Bank Board's rules prohibiting contacts between the Chairman and parties to Bank Board disputes exceeded the bounds of proper representation. Although the Advisory Opinion permits communications for the purpose of arranging interviews or appointments, nothing in the Opinion suggests that it is ever appropriate for a Member to request that an Agency official violate the Agency's own rules.

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[138] The intervention on behalf of Dixon is described in Section III. F.3.c.(7)(c), below.

Bank Board regulations provide:

> An employee shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:
>
> * * *
>
> (b) Giving preferential treatment to any person;
>
> * * *
>
> (d) Losing complete independence or impartiality;
>
> (e) Making an Agency decision outside official channels; or
>
> (f) Affecting adversely the confidence of the public in the integrity of the Agency and the Government.

[12 C.F.R. § 511.735-10][139] The Bank Board's prohibition against parties to Bank Board disputes meeting with the Chairman is an appropriate and reasonable application of this regulation. Moreover, the consequences of its violation were significant. As Fairbanks testified, Gray's meeting with Gaubert disqualified Gray from later ruling on the merits of Gaubert's dispute with the Bank Board's Office of Enforcement. [Fairbanks Tr. 103, 118.]

Advisory Opinion No. 1 implicitly recognizes that Members must respect an Agency's freedom to operate without interference within a statutory and regulatory framework. A Member may not call for reconsideration of an administrative response unless he believes that response is not supported by established law, federal regulation, or legislative intent. Gray's initial refusal to meet with Gaubert was consistent with Bank Board regulations; Wright did not and could not argue otherwise. Accordingly, Wright's insistence that Gray meet with Gaubert in violation of Bank Board rules constituted a violation of the Rules of the House as interpreted by Advisory Opinion No. 1.

We further believe that Wright's intervention on behalf of Gaubert demonstrated a continuing attempt to influence the Bank Board to

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[139] Although in many instances *ex parte* communications constitute a violation of the Government in the Sunshine Act, 90 Stat. 1241, 1246, 5 U.S.C. § 557(d), that Act is inapplicable to Wright's communication regarding Gaubert and to Gaubert's communication with Gray. The Government in the Sunshine Act does not apply unless a statute requires an adjudication to be determined on the record after an agency hearing. 5 U.S.C. § 554(a). Bank Board meetings relating to FSLIC supervisory and enforcement matters, such as Gaubert's, are non-public and not on the record. [Exhibit F-38.] Accordingly, the Act does not apply.

change its legitimate administrative responses. Although Wright ostensibly did nothing more than ask for a meeting, the Bank Board officials believe that Wright was actually seeking a favorable resolution for Gaubert. [Gray Tr. 136; Black Tr. 148; Fairbanks Tr. 101, 104-06; 147.] As noted in Section III. F.3.c.(2)(f) above, a carefully worded request may still constitute a violation if the Member in fact intends an impermissible purpose.

We believe that Wright's statements that his intervention on behalf of Hall was successful but that his interventions on behalf of Gaubert and Dixon[140] were "extremely unsuccessful" show that he was not merely asking the Bank Board for a meeting for Gaubert. Instead, these statements indicate that Wright was seeking a resolution favorable to Gaubert.

(6) Telephone Call Regarding H. Joe Selby

(a) H. Joe Selby

Between May 1, 1986, and April 28, 1988, H. Joe Selby served as Executive Vice-President and Director of Regulatory Affairs of the FHLB-Dallas. [Selby Tr. 6-7.] Prior to joining the FHLB-Dallas, Selby served for nearly 32 years with the Comptroller of the Currency. [Selby Tr. 6-7.] For seven months in 1985, Selby served as Acting Comptroller of the Currency. [Selby Tr. 7.]

Virtually every witness who knew him had the highest praise for Selby and his abilities as a tough regulator. For example:

> [E]verybody knew that Joe Selby was one of the best federal regulators in the business and had been for all these years.

[Gray Tr. 144, 154.]

> I had great respect for Joe Selby prior to the time I hired him. I had great respect for Joe Selby the entire time he was there. I have continued great respect for Joe Selby. He is a tremendous regulator and his departure from the Federal Home Loan Bank of Dallas, in my estimation, was a phenomenal loss to the system.

[Green Tr. 31.] William Black, former Deputy Director of FSLIC, testified that Selby had the most prestigious resume in the entire Federal Home Loan Bank system. [Black Tr. 98.] Indeed, even Selby acknowledged that many considered him to be the banking agencies' top regulator. [Selby Tr. 52.]

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[140] *See* Section III. F.3.c.(7) for a discussion of Wright's intervention on behalf of Dixon.

Roy Green, former FHLB-Dallas President, testified that he "hand-picked" Selby to help him "clean up" the Southwest thrift crisis. [Green Tr. 31.] Gray believed Selby's expertise as a top banking regulator would greatly assist the Bank Board. [Gray Tr. 142-44, 175.] Green first approached Selby about the position in 1985 while Selby was still at the Comptroller's Office. [Green Tr. 30-31; Selby Tr. 19-20.] Selby said Green told him he wanted him to restructure the supervision program for thrift institutions in the Ninth District. Selby had previously supervised a similar reorganization of the Comptroller's office. [Selby Tr. 22, 26.]

When Selby joined the FHLB-Dallas, the thrift crisis was still in its early stages. Selby recalled that he received a great deal of publicity as a tough regulator when he joined the FHLB-Dallas. [*Id.* at 52-53.] At the time, the economy had taken a dramatic turn downward. [*Id.* at 53.] Many Texas savings associations could tell that their mounting accumulation of non-performing loans would eventually lead to operating losses and—ultimately—insolvency. [*Id.*] Selby said that there was an atmosphere of fear about the future within the industry. [*Id.*] When the reportedly tough new regulator arrived, many in the industry distrusted or feared him. [*Id.* at 53.]

Between May and December 1986, the FHLB-Dallas placed at least 100 supervisory actions on associations following examinations. [*Id.* at 100.] Selby described the atmosphere in the industry as "electric." He said the "real electricity" started when the FHLB-Dallas placed Western Savings into receivership in October 1986. [*Id.* at 64.]

As discussed in Section III. F.3.a. above, during this time period, the FHLB-Dallas and the Bank Board in Washington came under a great deal of criticism by certain segments of the thrift industry. As the FHLB-Dallas's chief regulator, Selby bore the brunt of this criticism. For many in the industry, Selby personified the FHLB-Dallas's tough supervisory and regulatory response to the thrift crisis.

(b) Wright's Telephone Call

In November 1986, shortly after his telephone call regarding Gaubert, Wright telephoned Gray to express his "deep concern about the way institutions were being treated in Texas." [Gray Tr. 142.] Wright mentioned Selby. [*Id.*] Gray testified as follows:

> And so I received a call and it basically was another call about the treatment of Texas S&L institutions. And then [Wright] said that he understood that Selby was a homosexual. And he understood from people that he believed and trusted [that] Selby

had established a ring of homosexual lawyers in Texas at various law firms, and that in order for people to deal with the Federal Home Loan Bank supervision people, they would have to deal with this ring of homosexual lawyers.

Now I have never, I mentioned this to a few people, but being very concerned about the reputation of a man like Selby, I have no idea what his sexual preference is. I told Wright at the time that that didn't make any difference, but after talking about the bad treatment of Texas institutions and then this homosexual ring, he said to me, "Isn't there anything you can do to get rid of Selby or ask him to leave or something?" And I said "No. I was the one who recruited him. I think very highly of him. He is doing what I want him to do. He is being a tough regulator. That is why I brought him from the Office of the Comptroller of the Currency to Texas."

Unfortunately, that is what happened in that call and I must say that I was really stunned to have the Speaker, the person who would be the Speaker, repeating those kinds of allegations about a man who was serving me, I thought, well in a controversial job and to repeat the allegations, complaints, that he was homosexual and had established this ring, which to me was incredible. I didn't believe it.

[Gray Tr. 142-45, 148, 149, 153-54, 177; Fairbanks Tr. 114-15; Hall Tr. 180-82.]

The call lasted between seven and ten minutes. [Gray Tr. 156.] Gray said he did not feel any need to investigate Wright's allegations. [Gray Tr. 159-60.] After the call, he told his staff what Wright had requested. [Gray Tr. 142, 145; Fairbanks Tr. 116; Taylor Tr. 40; Black Tr. 98-101.] Gray's assistant Mary Ellen Taylor recalled that Gray was horrified at Wright's request that he get rid of Selby. Taylor testified that Gray said at the time: "What are these people on the Hill doing?" [Taylor Tr. 40.]

Black testified that Gray told him about Wright's telephone call regarding Selby within a week or so of the call. According to Black, Gray told him that Wright said he wanted Gray to fire Selby because Selby "is a homosexual and he is sending all the work of the FHLB-Dallas to a homosexual law firm." [Black Tr. 98-101, 148.]

We received no evidence lending any credence to the truth of Wright's allegations. Fairbanks testified that in her opinion, "there was absolutely nothing other than ... a character assassination involved." [Fairbanks Tr. 116.] Nevertheless, similar allegations regarding Selby apparently had circulated in Texas. George Mallick testified as follows:

Q Did you hear any suggestions about Selby and his competence or his bias in the course of your report?

A Yes.

Q What did you hear?

A I heard he was a terrible sort of man when it came to dealing with—dealing with thrifts as a regulator, that he had taken—this is me speaking—had taken a meat axe to the problem. Many, many people in the industry disliked him and suggested that he was less than honorable in his dealings with the owners and the managers of institutions.

Q Anything else?

A That is generally it.

Q Did people suggest he be fired?

A I have never heard that suggestion?

Q I am sorry?

A I have never heard that suggestion.

Q Nobody discussed firing him because he was a homosexual?

A Not with me.

Q Or that he referred business to a ring of homosexual lawyers?

A Mr. Phelan, I heard those rumors. They were simply rumors.

[Mallick II Tr. 124-25; *see also* Hall Tr. 182.]

(c) Analysis and Conclusions

Based on the above corroborative testimony, we find Gray's testimony regarding Wright's telephone call to be credible. As noted above, the Committee did not receive any direct evidence regarding Selby's sexual orientation. In any event, his sexual orientation is completely irrelevant to his qualification for employment in the Federal Home Loan Bank System. Every credible witness who claimed knowledge of Selby or his reputation had only the highest praise for the man's character and ability. Moreover, none gave any credence to the incredible rumor embraced by Wright that Selby "had established a ring of homosexual lawyers" who were receiving all of the FHLB-Dallas's supervisory work.

Wright's request that Gray "get rid of" Selby greatly exceeded the bounds of proper congressional conduct. House Rule XLIII, clause 1,

provides: "A Member ... shall conduct himself at all times in a manner which shall reflect creditably on the House." An attempt to destroy the distinguished career of a dedicated public servant because of his rumored sexual orientation or because of a wild accusation hardly reflects creditably on the House. Such an attempt is a direct violation of House Rule XLIII.

(7) Telephone Call Regarding Don R. Dixon[141]

In December 1986, shortly after Christmas, Wright telephoned Bank Board Chairman Gray regarding Don R. Dixon of Vernon Savings & Loan Association. [Gray Tr. II 6-7.] Dixon was a premier example of the "high flyers" discussed in Section III. F.3.a.(2) above. [*See* Black Tr. 68, 75, 82; Green Tr. 75.] When FSLIC placed Vernon into receivership in March 1987, 96 percent of its loans were in default. [Black Tr. 107.]

(a) Dixon's Bank Board Dispute

Vernon Savings & Loan was a Texas-chartered, federally-insured association with its main office located in Vernon, Texas. [Exhibit F-39, p. 1.] Three of its nine branches were located in or around Dallas, as were the offices of its parent holding company. [*Id.*] Dixon, a former Texas real estate developer, had controlled Vernon since 1982, either directly or through a Dixon-controlled holding company named Dondi Financial Corporation. [*Id.*, p. 1-2.]

Before Dixon assumed control, Vernon engaged primarily in traditional mortgage lending activities. [*Id.*, p. 1.] The association reported total assets of approximately $82 million at the time of Dixon's acquisition. [*Id.*] By December 31, 1986, at the time of Wright's intervention, Vernon was grossly insolvent. [*Id.*] Its $1.696 billion in liabilities exceeded its $1.347 billion in assets by $349 million. [*Id.*] Most of those assets consisted of highly speculative ADC loans (40 percent) and commercial real estate loans (25 percent).[142] [*Id.*, p. 1-2.]

After Dixon's acquisition of Vernon, the association abandoned traditional mortgage lending practices in favor of ADC and commercial lending. [*Id.*, p. 3.] During the period between the acquisition and December 1986, Vernon increased its assets—principally its

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[141] Although the Committee subpoenaed Dixon, he asserted his Fifth Amendment right against self incrimination and refused to testify.

[142] "ADC" stands for Acquisition, Development, and Construction. See Section III. F.3.a.(2) above for a discussion of ADC and commercial loans' prevalence in insolvent associations.

loan portfolio—by 1,023 percent. [*Id.*, p. 2.] It achieved this growth through the solicitation of brokered deposits, Jumbo CDs, and other high-rate deposit instruments. [*Id.*] By engaging in the questionable underwriting and accounting practices discussed in Section III. F.3.a.(2) above, Vernon was able to report that it was the most profitable institution in America. [Black Tr. 75.]

At the time Dixon acquired Vernon, there were no outstanding items of supervisory concern. [Exhibit F-39, p. 10.] A federal examination as of November 1982 (following Dixon's acquisition) noted several regulatory violations, including a conflict-of-interest violation and loan documentation deficiencies. [*Id.*] The responsible federal supervisory agent sent Vernon a supervisory letter requesting corrective action. [*Id.*]

The State of Texas examined Vernon as of January 1983. [*Id.*] The Texas report noted that Vernon had a high percentage of its assets concentrated in "interim construction" and land development loans. [*Id.*] It further noted that Vernon had financed the cost of the land, the closing costs, and the interest charges in about 95 percent of the construction loans. [*Id.*] Such up-front financing of fees and interest prevented a loan's default prior to maturity. [*Id.*] It further permitted Vernon to record "huge amounts of income in the form of commitment and loan origination fees." [*Id.*]

A federal examination as of October 1983, noted "significant regulatory violations, unsafe and unsound practices, lending deficiencies, inadequate books and records, and control problems." [*Id.*, p. 11.] In 1984, as a result of this examination, the federal regulators convinced Vernon's board of directors and management to execute a Supervisory Agreement. [*Id.*] A Supervisory Agreement places operating restrictions on institutions in serious condition where management has failed to follow sound operating policies. [Selby Tr. 86-87.] Vernon's Agreement included provisions aimed at reducing liability and brokered deposit growth and diversifying Vernon's loan portfolio away from ADC loans. [Exhibit F-39, p. 11.] It also addressed Vernon's poor underwriting and appraisal practices. [*Id.*, p. 11-12.]

A 1985 Texas examination questioned the validity of Vernon's reported earnings. [*Id.*, p. 12.] A federal examination report received in November 1986, "demonstrated that Vernon was out of control." [*Id.*] That report blamed Vernon's board and management for mounting losses and for non-compliance with the 1984 Supervisory Agreement. [*Id.*] It further accused Vernon's top officers of "severely impeding" the examination process. [*Id.*] The examination report noted significant unrecorded losses and overstatements of income. [*Id.*, p. 12-13.] It found at least one sham transaction designed to show a "fraudulent profit" on Vernon's books. [*Id.*]

To address the above supervisory concerns, in July 1986, FSLIC issued a cease-and-desist order mandating that Vernon cease violating various regulations and imposing certain lending restrictions. [*Id.*, p. 13.] As a further response, the FHLB-Dallas Supervisory Agent responsible for Vernon requested authority from the Bank Board to conduct an investigation of Vernon pursuant to § 407(m)(2) of the National Housing Act. [*Id.*; 12 U.S.C. § 1730(m)(2).] That section authorizes investigators to issue subpoenas and to take depositions under oath.[143]

A 1986 Texas examination found that Vernon kept two sets of board minutes, one of which was not furnished to the directors. [Exhibit F-39, p. 14.] The examination found that Vernon's December 1985, report to the Bank Board had understated the value of "scheduled" loans by almost $200 million.[144] [*Id.*] It further found that 70 percent of Vernon's interest and fee income was self generated, that Vernon had overstated its income on various transactions, and, contrary to its reports to the Bank Board, that Vernon's net worth was negative during 1985 and 1986. [*Id.*]

In September 1986, Vernon voluntarily agreed to be placed under the supervisory control of the Texas Savings and Loan Department. [*Id.*] The agreement provided that the state regulators could require Vernon's board to promptly approve any plan of merger, acquisition, or reorganization recommended by the state or by FSLIC. [*Id.*]

In August 1986, the FHLB-Dallas began its § 407 examination of Vernon. [*Id.*, p. 15.] Interim reports issued between October and December indicated that Vernon was "hopelessly insolvent." [*Id.*] Forty percent of Vernon's loan portfolio was delinquent. [Exhibit F-40, p. 3.] The examiners predicted losses in the range of $350 to $600 million. [Exhibit F-39, p. 15.]

The interim reports disclosed numerous instances of misconduct on behalf of Vernon's management. Between 1984 and 1986, despite Vernon's dismal financial condition, Vernon paid bonuses totaling $1.6 million to ten senior officers. Dixon alone received $1.1 million. [Exhibit F-34, p. 3.] Vernon's non-management directors claimed

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[143] "In connection with examinations of insured institutions and affiliates thereof, [FSLIC], or its designated representatives, shall have power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such institution or affiliate thereof, and to issue subpoenas and subpoenas duces tecum, and, for the enforcement thereof, to apply to the United States court . . . ." [12 U.S.C. § 1730(m)(2).]

[144] Bank Board regulations require troubled loans to be "scheduled" or "classified." *See* Section III. F.3.a.(2)(d) above.

they had never approved the bonus program and that, in fact, Vernon's management lied to them. [Exhibit F-39, p. 15.]

The examiners discovered that Vernon maintained an aviation department consisting of six pilots and five aircraft. [*Id.*] Operating losses relating to the aircraft totaled $5.7 million between 1984 and 1986. [Id., pp. 3-4.] Other instances of misconduct included numerous related-party transactions, falsified documents, understatements of losses, and overstatements of income. [Exhibit F-40, p. 3.]

Dixon may have also engaged in kickback schemes. [Black Tr. 81.] Bank Board examiners believe that Dixon required a number of Vernon's major borrowers to purchase interests in his own real estate developments. [Black Tr. 81-82.] Apparently, Dixon made substantial profits on these transactions. [Black Tr. 82.]

Roy Green, then-President of the FHLB-Dallas, said that Vernon was the worst-run, worst-managed debacle that he knew of in the savings and loan industry. [Green Tr. 73.]

In late December, 1986, the FHLB-Dallas intended to seek a "consent-to-merger agreement" from Vernon. [Gray II Tr. 9.] A consent-to-merger agreement is an expanded supervisory agreement. [Selby Tr. 86-87.] In addition to the operating restrictions imposed by the typical supervisory agreement, a consent-to-merger agreement authorizes FSLIC to arrange for the association's merger or sale. [*Id.*; Black Tr. 105.] It typically gives FSLIC the right to replace management and directors at will. [Selby Tr. 86-87.]

Consent-to-merger agreements are usually placed on insolvent institutions. [*Id.*] As discussed in Section III. F.3.a.(1) above, one of the District Bank's primary purposes is to provide liquidity to its member savings associations. [Black Tr. 106-07.] When an association needs cash, it borrows the funds from the District Bank. [*Id.*] On the other hand, before making loans to associations in poor financial condition, the District Banks require FSLIC to guaranty repayment. [*Id.*] FSLIC will not provide such a guaranty unless the troubled association accepts a consent-to-merger agreement. [*Id.*]

The consent-to-merger agreement sought from Vernon authorized the FHLB-Dallas Supervisory Agent to replace Vernon's directors and officers upon request. [Exhibit F-41, ¶ 8.] Moreover, it provided that Vernon's board would use the Supervisory Agent's recommendations to fill vacancies. [*Id.*, at ¶ 11.]

(b) Dixon's Contacts With Wright

John Mack testified that he received a telephone call regarding Dixon from Congressman Tony Coelho:[145]

> Congressman Coelho said that there was a problem with this bank, that the FSLIC was going to shut it down that day, as I recall, and that the banker was trying to attempt to gain other methods of financing to keep his bank alive, and was there anything we could do to give them a grace period to allow the person the opportunity—prior to him being shut down—the opportunity to refinance it so that the government did not have to put any of its money toward that project.

[Mack Tr. 66-67; *see* Wright Tr. 56; Duncan Tr. 174; Lynam Tr. 118-19.] At the time, Wright, Mack, Phil Duncan, and Marshall Lynam were meeting in George Mallick's office. [Wright Tr. 56.] Wright testified that Mack told him:

> Tony Coelho says that Don Dixon of Vernon Savings & Loan is trying to get a hold of you on the phone, and . . . you have not answered his call. . . .
>
> Tony claims it is a crisis and that this guy is going to lose his whole career, his life's work, and his whole business if you don't talk to him and find out what you can do for him.

[*Id.*]

Wright agreed to telephone Dixon. [*Id.*] According to Wright, Dixon told him:

> Look, they are getting ready to put me out of business. They are going to put me and all the stockholders completely out of business. They are going to take our business away from us. If I can be given a week, I have located a source of income, a source of loans, financing in Louisiana, . . . a person who will take over all the non-performing notes and provide capital to continue and redo our operation here, if they will just give me that time.

[*Id.* at 57-58.]

Wright testified that Dixon told him that the FHLB-Dallas would not give him any time: "[T]hey said not one week, not one day." [*Id.* at 58.] According to Wright, Dixon asked him to talk to Ed Gray about providing some time. [*Id.*]

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[145] Although Wright testified that the telephone call was in November 1986, other testimony and documents conclusively place the call around Christmas.

Wright said he would not know Dixon "if he walked in the door." [Wright Tr. 55.] On the other hand, Wright acknowledges that he may have met Dixon one time. [*Id.*] Documents produced by the Bank Board include a photocopy of a photograph depicting Wright and Dixon aboard the yacht *High Spirits*. Handwritten on the face of the photograph is the following inscription:

> For Don Dixon, with very best personal regards. Jim Wright 10/21/85.

[Exhibit F-42.] An accompanying October 31, 1985, cover letter written by Tony Coelho states:

> Dear Don:
>
> Enclosed are photographs which were taken on the High Spirits yacht. I thought you might be interested in having the photos. Don, please feel free to contact me if I may be of assistance.
>
> /s/ Tony Coelho
>
> Chairman

[Exhibit F-43.] Coelho sent the photographs to Dixon on DCCC letterhead. [*Id.*][146]

According to Mack, he did not make any attempt to investigate Dixon's background or to determine the legitimacy of his request. [Mack Tr. 67-69, 77-78.] Both Mack and Lynam testified that it was not the practice of Wright's staff to ever make such an investigation. [Mack Tr. 67-69; Lynam Tr. 131-32.]

(c) Wright's Intervention on Behalf of Dixon

Ed Gray testified that Wright called him regarding Dixon and Vernon sometime around Christmas, 1986. Wright reached Gray at his home in California. According to Gray, Wright told him he understood that "the Bank Board was going to close down Vernon Savings . . . either that day or the next day." [Gray II Tr. 7; Black Tr. 104-05.] Gray said he told Wright he did not think that was the case because closing an institution required a Bank Board meeting and he had not authorized any such meeting. [Gray II Tr. 7-8; Fairbanks Tr.

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[146] We draw no specific inference from the photograph alone. A congressman cannot be held responsible for knowing every person he meets at an event or every person with whom he has his photograph taken.

120; Taylor Tr. 41; Mack Tr. 70-71.] According to William Black, the Bank Board's Director of Litigation at the time, Gray understood "shut down" to mean the imposition of a receivership, a complete takeover of the association by FSLIC. [Black Tr. 104.]

According to Wright, the telephone conversation transpired as follows:

> I said, "Ed, I don't know anything about Vernon Savings & Loan. I don't know if it's valid or not. I don't know if it's meritorious. But the man claims so and so. He's being kicked out of business. He's got a week or three or four days that he can save it and avoid foreclosure. Why don't you look into it?"
>
> He said, "there's no way they can kick him out today. I'll call and talk to him."
>
> That's the last I heard of him, last I wanted to hear of him. That's absolutely everything there was to do with him.

[*Id.* at 58-59; *see* Mack Tr. 69-70.]

Gray did not testify that he said he would call Dixon. Gray said he told Wright he would call FHLB-Dallas President Roy Green and find out if there was something happening that he did not know about. [Gray II Tr. 8.] Gray reiterated to Wright that Vernon was not going to be "closed down," but that he would clarify what was going on. [*Id.*] Because Wright was catching a plane back to Washington, he told Gray to telephone John Mack with the information. [*Id.*; Mack Tr. 70-71.]

Gray called Roy Green regarding Wright's call about Vernon being "closed down." [Gray II Tr. 8; Green Tr. 63.] Green told Gray, "No. I don't know anything about that. Only you would know that." [Gray II Tr. 8.] Gray asked if there was anything else going on. Green checked and determined that FHLB-Dallas supervisory agents were planning to seek the consent-to-merger agreement from Vernon's directors that afternoon. [Gray II Tr. 8-9; Green Tr. 64.]

Gray figured that Wright had received incorrect information so he called Mack to explain. (It took Gray and Green two hours to reach Mack because of Wright's move from the Majority Leader's office to the Speaker's office.) They finally reached Mack and explained the difference between a consent-to-merger agreement and the closing down of an institution. Gray and Green assured Mack that they were not "closing down" Vernon. Gray told Mack that it was unknown whether Vernon's board would even agree to the consent-to-merger agreement.[147] [Gray II Tr. 9-10; Taylor Tr. 42.]

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[147] In fact, Vernon's board agreed to the consent-merger agreement on December 31, 1986. [Exhibit F-41.]

Although he was not sure, Green thought that the call to Mack occurred in the early part of the next week. [Green Tr. 65.] Gray telephoned and asked him to "set the record straight" with Mack regarding the calls the week before. [Green Tr. 63, 65, 70.] With Green on the line, Gray called Mack. [*Id.* at 65.] Green said it was apparent from the conversation that a miscommunication had occurred between Gray and Wright's office. [*Id.*] Green explained to Mack that the FHLB-Dallas had obtained a consent-to-merger agreement from Vernon's board, but had not closed Vernon down. [*Id.* at 70.] He told him that it was "still business as usual" at Vernon. [*Id.*] There had been no personnel changes. [*Id.* at 71.]

According to Gray, Mack said that "the reason this was so important was because there was an investor in Louisiana." [Gray II Tr. 10.] Gray told Mack that if there was an investor foolish enough to bring $300 million to a massively insolvent institution, the Bank Board would certainly be interested. [*Id.* at 10-11.] Gray further explained that the consent-to-merger agreement did not affect the ability of an investor to discuss such a capital infusion with the Bank Board. [Gray II Tr. 10-11, 81-82; *see* Selby Tr. 92.] According to Gray, Mack said "that he guessed he understood." [Gray II Tr. 11.] Gray and Green gave Mack their home telephone numbers. [*Id.*]

Mack called Gray back 30 to 45 minutes later. [*Id.*] He was very angry. [*Id.*] He said, "I talked to some people about this, and they say that this is in fact closing down the institution." [*Id.*] Gray said, "No, that is not the case. The consent-to-merger resolution is by definition not closing down the institution. Nothing has happened with respect to the ability of the institution itself or of you or of anyone else to say we are interested in recapitalizing the institution." [*Id.* at 11-12, 70-72.]

Gray told Mack that in any event, the Bank Board would not be taking action until after the Christmas break and that if Mack found such an investor, he should let the Bank Board know. [*Id.* at 12.] No investor appeared and Vernon was placed in a pass-through receivership on March 20, 1987. [Gray II Tr. 12.]

Mack testified to a slightly different version of his conversation with Gray. According to Mack, when Gray called him following Wright's call:

> He told me that it was, in fact, true that they were going to shut [Vernon] down at two o'clock that day, that he was unaware of it, that there was going to be a poll conducted, I guess, by members of the Board, or whoever does it. They were going to take a telephone poll and [they were] going to close it down.

[Mack Tr. 72.] Mack testified that he informed Wright of his conversation with Gray on or about the next day. He also informed Tony Coelho and Don Dixon. [Mack Tr. 74-75, 81.]

Wright's aide Phil Duncan testified that sometime after the sequence of telephone calls regarding Vernon, he met briefly with Dixon at an airport. He said he received a copy of a "report" prepared by Donaldson, Lufkin & Jenrette on an "article" called "Harry James Doing Business as the Nepenthe Group." Duncan testified that the Nepenthe Group was apparently the buyer which Dixon had mentioned. [Duncan Tr. 177.]

According to H. Joe Selby, the FHLB-Dallas Director of Regulatory Affairs, there was no change-of-control application pending for Vernon at the time of Wright's call. [Selby Tr. 98.] On the other hand, Green recalled that an application to change ownership was in progress at the time. [Green Tr. 65.] Green said "it was something that was brought in basically at the last moment prior to that time." [*Id.* at 65-66.] Green recalled Dixon's request that the FHLB-Dallas withhold action against Vernon because in a short period of time it could have new ownership and new capital [Green Tr. 67.]

Records produced by the FHLB-Dallas indicate that Selby was correct. No change-of-control application for Vernon was pending at the time of Wright's call. [Exhibit F-44.] Indeed, a memorandum prepared by the FHLB-Dallas indicates that no such application had been received as of March, 1987. [*Id.*] Nevertheless, Green was correct in that the FHLB-Dallas learned on December 31, 1986—the date Vernon's board signed the consent-to-merger agreement —that Vernon's board was considering proposals for the sale of Vernon's stock. [*Id.*]

On January 2, 1987, the FHLB-Dallas received four proposals regarding Vernon, including two connected with the Nepenthe Group referred to by Duncan. [Exhibit F-45.] The FHLB-Dallas evaluated and rejected all four proposals as unacceptable. In a January 9 memorandum, the FHLB-Dallas concluded:

> In summary, nothing in this "bundle" represents a viable plan for solving the Vernon problems. It would be my suggestion that we return the proposals to State Supervisory Agent Earl Hall, Jr. and advise him that should valid proposals regarding the sale of assets or change of control be made to Vernon, we will be happy to review such proposals along with his staff to determine if they are in Vernon's and FSLIC's best interest.

[Exhibit F-45.] The FHLB-Dallas later received an independent evaluation of the Nepenthe proposals prepared at the request of

Vernon's Acting Chief Executive Officer. [Exhibit F-44.] That evaluation concluded:

> that the proposal by the Nepenthe Group, Inc., would be more likely to harm Vernon than to help it; that the proposal departed from conventional business practices; [that] it would create problems with the Federal Home Loan Bank; and that ratification by the Board of Directors would leave Vernon and conceivably the Board members open to shareholder action.

[Exhibit F-44.] The evaluation further noted that the Nepenthe proposal was not a firm offer, that the purchaser was not identified, that the purchaser's ability to perform was not known, and that the proposal was detrimental to Vernon as none of the purchase price was to be in cash. [*Id.*]

It is clear that Wright was willing to intervene on Dixon's behalf without performing even a rudimentary investigation of Dixon's dispute with the Bank Board or the legitimacy of his request. Moreover, as discussed in Section III. F.3.c.(8) below, Wright thereafter became wed to a mistaken version of the facts. He believed that Gray had promised that the Bank Board was not going to "close down" Vernon, but that it did so anyway. He further believed that the Bank Board had taken away Dixon's ability to arrange for a purchaser of Vernon when such was not the case. Gray was correct when he told Wright and Mack that the consent-to-merger agreement neither closed Vernon nor affected its ability to be sold.

(d) Bank Board Response Regarding Dixon

The FHLB-Dallas officials obtained the consent-to-merger agreement from Vernon's board of directors on December 31, 1986. [Exhibit F-41.] Although Vernon was not placed into receivership at that time, the reason had more to do with the insolvency of the FSLIC fund than with Wright's intervention. [Black Tr. 150-51.] To close Vernon, FSLIC would have had to pay its insured depositors approximately $1.6 billion within four days of the closing. [Black Tr. 151.] Because the FSLIC recapitalization bill did not pass the 99th Congress, FSLIC was insolvent.

Vernon was placed in a "pass-through receivership" on March 20, 1987. [Black Tr. 105; Exhibit F-46.] In a pass-through receivership, the institution is not liquidated. [Black Tr. 105.] According to Black, when a grossly insolvent institution such as Vernon is kept open, it will continue to generate large operating losses on a monthly basis. [Black Tr. 149-51.] He recalled that Vernon ultimately was losing approximately $10 million per month. [*Id.*]

On April 27, 1987, FSLIC sued Dixon and several of Vernon's officers [Exhibit F-42.] FSLIC's complaint accused Dixon of "looting, dissipating, and wasting Vernon's assets." [*Id.*, p. 5.]

(e) Analysis and Conclusions

Wright's attempt to intervene on behalf of Dixon and Vernon Savings dramatically illustrates the wisdom of Senator Douglas' suggested ethical standard:

> [A] legislator should not immediately conclude that the constituent is always right and the administrator is always wrong, but as far as possible should try to find out the merits of each case and only make such representations as the situation permits.

[P. Douglas, *Ethics In Government* 88 (1952)]. Indeed, in Vernon's case, Wright could not have picked a more unseemly beneficiary of his influence. Nevertheless, Wright's request for a delay in Vernon's "closing" did not, in and of itself, constitute a violation of Advisory Opinion No. 1. Asking for a brief delay in an administrative response is not the same as asking for a change in the response.[148] Moreover, because of Chairman Gray's response to Wright that Vernon was not being "closed down," Wright did not actually make a request other than that Gray investigate and report back. Such a request constituted a proper request for information or a status report under Advisory Opinion No. 1.

(8) Meeting of February 10, 1987

On February 10, 1987, Roy Green, H. Joe Selby, Walter Faulk, William Robinson, L. Arlen Withers and William Black met with Wright in his offices. [Black Tr. 118.] Green was FHLB-Dallas's President, Selby was FHLB-Dallas's Director of Regulatory Affairs, Faulk was a FHLB-Dallas Supervisory Agent, Robertson was the Bank Board's Director of Supervision, and Black was a Deputy Director of FSLIC. Black served as the Bank Board's "point man" regarding FSLIC recapitalization. [Gray II Tr. 27, 50.]

The Bank Board and FHLB-Dallas officials suspected that Wright was delaying House consideration of the recapitalization bill. Since they believed they were doing all they could to accommodate Wright,

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[148] One could certainly conceive of a factual scenario where the effect of even a brief delay may be great. For example, where an agency intends to seek an injunction to protect specific property, a delay in obtaining the injunction may permit the property to be lost. In such cases, a Member's request for a delay in an administrative response, no matter how brief, may be equivalent to a Member's request for a change in an administrative response.

they were unsure why this was so. According to Black, Green and Selby originated the idea of meeting with Wright.[149] They wanted to explain to Wright why the FHLB-Dallas had increased its emphasis on regulation and supervision. [Black Tr. 120.] All of the officials wanted to emphasize the necessity of FSLIC recapitalization. [Black Tr. 120-21.]

Attending the meeting with Wright were John Mack, Marshall Lynam, Mike Grisso, George Mallick, Michael Mallick, and John Barry. [Barry Tr. 11-12.] Mack and Lynam were Wright aides, the Mallicks were Wright's friends, and Barry was a reporter writing a book about the Speaker. [Barry Tr. 8.] The Mallicks' presence was notable, as Wright had requested that they prepare a report about the Texas savings and loan crisis.[150]

The banking officials' planned presentation changed significantly because of the presence of Barry and the Mallicks. The officials had intended to discuss the facts surrounding their treatment of Vernon, Independent American, and other open institutions. Because Bank Board policy prohibits the discussion of open institutions with other than Members or their staffs, the officials were forced to speak about general issues only. [Black Tr. 124, 170, 175.]

To explain the Mallicks' presence, Mack testified that Wright at times invites people visiting his office to meetings. [Mack Tr. 88.] Barry testified that Wright had been giving him access to many meetings while he worked on his book. [Barry Tr. 9.]

According to Black, the meeting started with pleasantries. Green then spoke about the general Texas economy and the general state of the S&L industry in Texas. Green explained what the FHLB-Dallas was doing to help institutions in their district deal with the district's economic problems. This part of the meeting took 35 minutes.

Green then raised the issue of forbearance and explained that the FHLB-Dallas was applying whatever rational forbearances were dictated by the circumstances. Green also explained how leaving

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[149] There have been accounts in the press alleging that Wright called the meeting in order to pressure the banking officials. As the above indicates, it is clear that the meeting was initiated by the Bank Board and FHLB-Dallas officials. [*See* Exhibit F-48.] Black said that an intermediary arranged the meeting. [Black Tr. 118-19.] Marshall Lynam testified that the appointment was requested by Robert Strauss and one of his associates. [Lynam Tr. 121-22.] Phil Duncan recalled that the meeting had been set up by Strauss and Livingston Cosberg, a wealthy Houston S&L operator and land developer. [Duncan Tr. 168-70.] Lynam said Wright was surprised when the Bank Board and FHLB-Dallas officials appeared. [Lynam Tr. 121-22.] Black was unaware that Robert Strauss had set up the meeting. [Black Tr. 190.]

[150] See Section III. F.3.b. above for a discussion of the Mallick report.

insolvent institutions open was harmful to the Texas economy in that the troubled institutions competed with the healthy institutions for deposits, thus driving up the cost of funds. [Black Tr. 169-70; Barry Tr. 15.] During this discussion, Wright asked questions. [Black Tr. 126.]

The meeting then shifted to Wright. He said that he got involved in the S&L industry not because he wanted to, but because other folks wanted him to become involved. He said he got involved in three things. Wright said that the first was handled very satisfactorily and worked out very well. He was referring to his intervention on behalf of Craig Hall. He said he talked to Gray and they were able to work it all out. [Black Tr. 126.]

Wright then said that the other two had been extremely unsatisfactory. According to Black, Wright then brought up Vernon and Dixon, although Wright did not initially recall Dixon's name.[151] He said, "I was told that Dixon had an alternative source—someone who would buy the institution is what it came down to—and all I wanted was some time to let this man have a chance to save his investment that he had made in this institution, Vernon Savings & Loan." [Black Tr. 130.] According to Black, Green responded, "Mr. Speaker, if you ever need a day, just call me. I will always give you a day for anyone who you believe needs it."

According to Black, Wright then said:

> When I talk to the head of a federal agency and he tells me something, you know, I believe him. And I asked Gray when they were going to shut down Vernon Savings & Loan and he personally assured me that they were not going to do that, and then I discover that you did just exactly that, and the very [same] day.

[Black Tr. 127.] Wright characterized this "misrepresentation by the head of a federal agency" as outrageous. [*Id.*]

According to Black, without interrupting, he attempted to explain how Wright had asked Gray whether Vernon was being shut down and Gray correctly said it was not because the imposition of receivership takes a Bank Board vote which had not occurred. [Black Tr. 127-28.] Black told Wright that a consent-to-merger agreement was not even remotely similar to the appointment of a receiver, the

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[151] There has been some dispute over who first brought up the subject of Vernon Savings and Dixon at this meeting. Barry recalled that Green said: "Let's talk about Vernon," in response to Wright's charges of arbitrary behavior. [Barry Tr. 20; Exhibit F-49.] Marshall Lynam also recalled that the regulators first mentioned Vernon. [Lynam Tr. 124.]

closing down of an institution. Moreover, it does not stop any merger and it can facilitate one. He also told him that no legitimate purchasers or realistic proposals ever appeared. [Black Tr. 131-33.]

According to Black, Wright responded that it was a distinction without a difference. He then looked at Black and, using a polite term, accused Black of being less than truthful with him. Black responded that he was a midwesterner and denied Wright's accusation.[152] [Black Tr. 133.]

At this point, according to Black, Wright began shouting at him. He went on for a while and then stopped. No one spoke for about 20 seconds. The conversation then meandered into something else but the meeting was over. On Black's way out, Wright shook his hand and told him not to be too worried about all this. [Black Tr. 134.]

Barry recounted the incident as follows: Wright was telling Green that "conservator" and "consent-to-merger" were just words; all Dixon wanted was one week. [Barry Tr. 23-24.] At that point in the meeting, Barry said that Black interrupted and said something like: "I am not from Washington. These aren't [just] words." [Barry Tr. 24.] According to Barry, Wright continued to speak and Black interrupted him again. [*Id.*] Following the second interruption, Wright turned to Black and said: "Wait just a god damn minute. I waited patiently for you and heard you represent your case, now you listen to me." [*Id.*; Exhibit F-49.]

John Mack recalled the incident as follows:

> Black then, and I don't recall how that all started nor what was said, but I remember Black, who was a young guy with a beard, then made some disrespectful comment. I don't recall exactly what it was, because I was trying to remember exactly what he said. It was something that I would not normally say to a Member, much less Wright. Wright put him in his place.
>
> * * * *
>
> I think he just reminded him that he was a guest in that office, and that the comments which he had just made, I don't recall what they were, as I said, were not fitting for this occasion. I don't recall exactly specifically. I am sure Wright does.

[Mack Tr. 85, 91.]

Marshall Lynam testified to the incident between Wright and Black. Lynam testified that Black:

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[152] Prior to his hearing before the Committee, Black told Special Outside Counsel that Wright may have accused him of "prevaricating," and he responded, humorously, that he was a midwesterner and midwesterners did not "prevaricate."

> seemed to be intent on picking a fight with Jim Wright about—I have forgotten exactly whether it was about Dixon specifically or some other point, but at any rate, there was one angry exchange in which Wright listened to this little fella [sic] sound off, and then he started trying to explain something, and the fella kept interrupting him.
>
> It seemed like he was deliberately trying to bait him, and Jim Wright at one point turned to him and said, "Now, just a god damn minute. I listened to you. Now you listen to me." After that, things were a little tense, but then they settled down again and on the whole, it was a constructive meeting.

[Lynam Tr. 124-25.] During his testimony, Lynam accused Black of twisting the events of the February 1987, meeting "entirely out of context." He said Black has "diligently tried to characterize Wright as a villain." [Lynam Tr. 121.]

After the meeting, the Bank Board people felt they had a disaster on their hands. [Exhibit F-50.] It was now February and they feared that Wright was going to stop the recapitalization bill again, if he had not already done so. [Black Tr. 136.] Wright was very upset and he explicitly stated that the Bank Board actions regarding Vernon and Independent American were very unsatisfactory to him. Moreover, there was now a push for a $5 billion bill with forbearance measures. The Bank Board believed that the forbearance provisions would have a very destructive effect on their ability to effectively supervise. [Black Tr. 136-37.] According to Black, Gray was unable to arrange meetings with Wright following the February meeting. [Black Tr. 142.]

(a) Analysis and Conclusions

Despite Wright's angry exchange with Bill Black, this meeting did not in itself constitute an impermissible communication in violation of the House Rules as interpreted by Advisory Opinion No. 1. To the extent that Wright mentioned specific matters before the Bank Board, he spoke only of past events. Wright did not seek to obtain or change any particular regulatory result. Nothing occurred other than an exchange of views.

As noted in other sections, the significance of the meeting was its demonstration that Wright's interventions on behalf of Hall, Gaubert, and Dixon were intended to influence Bank Board decision-making. The meeting was also significant in that it demonstrated Wright's continuing unfamiliarity with the facts surrounding the Bank Board's actions in relation to Vernon Savings & Loan.

(9) Meeting and Telephone Call Regarding William Black

In the latter part of April 1987, President Reagan announced his intent to nominate M. Danny Wall to replace Ed Gray as Chairman of the Bank Board. [Wall Tr. 31.] Gray's term expired on June 30, 1987, and Wall was sworn in the following day. [Wall Tr. 6.] Between 1979 and his appointment to the Bank Board, Wall had served as the Senate Banking Committee's Republican Staff Director.[153] [Wall Tr. 5-6.]

On July 29, 1987, Wall paid a courtesy visit on Wright. [Wall Tr. 16.] While Wall was waiting in Wright's offices, some of Wright's staff asked whether William Black was still employed by the Bank Board. [*Id.* at 16-17.] As noted in several sections above, Black was the Bank Board's former Director of Litigation and Deputy Director of FSLIC. Wall said he responded that Black was no longer on the staff of the Bank Board, but was on the staff of the FHLB-San Francisco, an independent entity. [*Id.* at 17.] When Wall entered Wright's office, Wright asked the same question about Black and Wall gave the same answer. [*Id.*] That ended the discussion of Black at that time. [*Id.*]

According to Wall, sometime after November 20, 1987, and perhaps as late as early 1988, Wright's aide Phil Duncan called Carl Hoyle, the Bank Board's director of Congressional and Public Affairs. [*Id.* at 17-19.] According to Wall, Duncan told Hoyle that Wall's response that Black was now employed by the FHLB-San Francisco, and thus out of the Bank Board's responsibility, was not satisfactory. Duncan did not accept that. He wanted Black fired. [*Id.* at 16.]

Why would Wright and his staff want to have Black fired? It appears that Wright and members of his staff blame Black for an unflattering article regarding Wright and his Bank Board interventions which appeared first in the December 1987, edition of *Regardie's* magazine and later in *Bankers Monthly.* In a letter to Kathleen Day of the Washington Post dated February 16, 1988, Wright wrote the following:

> The article in *Regardie's* magazine contained an enormous amount of fiction including an absolutely erroneous account which a fellow named Bill Black has tried unsuccessfully to plant with more responsible journalists, including yourself, if I am not mistaken. The wholly inaccurate account purports to tell a story where I was suppose [sic] to have "summoned" Black along with

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[153] Wall served as Committee Staff Director during the six years that the Republicans held a majority in the Senate.

> the heads of the Dallas Home Loan Bank Board for a dressing down for their treatment of Dixon and Vernon Savings & Loan. This is just totally inaccurate. The only meeting to which that very gross misinterpretation could have applied was a meeting requested by Roy Green and Joe Selby, not one to which I "summoned" anyone.
>
> Black, I am informed was not invited but attached himself to the entourage and insisted on coming with them. . . .

[Exhibit F-51.] Likewise, during his testimony, Marshall Lynam accused Black of twisting the events of the February 1987, meeting "entirely out of context." He said Black has "diligently tried to characterize Wright as a villain." [Lynam Tr. 121.]

William Black, in our opinion, was one of the most impressive witnesses to appear before the Committee. He received both his undergraduate and law degrees from the University of Michigan. [Black Tr. 9.] Following his graduation from law school in 1976, Black became associated with the Washington, D.C. office of Squire, Sanders & Dempsey. [*Id.*] In early 1980, he accepted a position as a trial attorney with the United States Department of Justice, Civil Division, Federal Programs Branch. [*Id.*]

In July 1981, Black rejoined Squire, Sanders & Dempsey. [*Id.* at 10.] He practiced there until 1984 when he accepted a position as the Bank Board's Associate General Counsel, Director of Litigation. [*Id.*] While Black was at Squire, Sanders, he sometimes represented FSLIC as outside counsel. [*Id.*]

As Litigation Director, Black was responsible for the Bank Board's and FSLIC's offensive and defensive litigation. [*Id.* at 11.] Because of his undergraduate economics background, Black found himself devoting considerable time to non-litigation-type activities, such as rulemaking. [*Id.* at 19.] He worked on virtually all of the Bank Board's major regulations promulgated in attempts to manage the growing thrift crisis. [*Id.* at 19-20.]

In January 1987, Black became Acting Deputy Director of FSLIC for Program Implementation. [*Id.* at 20-22.] His primary responsibility in this position was the recapitalization of FSLIC. [*Id.*] In July, 1987, he accepted his current position as Senior Vice President, General Counsel, and Corporate Secretary of the FHLB-San Francisco. [*Id.* at 22.]

Black did not appear to us as the type of individual who would misrepresent factual events. Indeed, Black's testimony before the Committee regarding the February 10 meeting discussed in Section III. F.3.c.(8) above is not significantly different from the testimony

of Wright's aides. He certainly did not give an account identical to the one appearing in *Regardie's*.

(a) Analysis and Conclusions

Although we lack direct evidence that Wright himself sought to have Black fired, we find it highly unlikely that Phil Duncan would have made the call to the Bank Board of his own volition. Accordingly, in combination with Wright's accusations against Black in his letter to Kathleen Day, without hesitation we draw the inference that Wright himself sought to have Black fired. The issue, then, is whether such a request violates the House Rules.

It is not clear that Advisory Opinion No. 1 applies in this context. Its stated reason for issuance is to provide guidelines in connection with the discharge of a Member's "representative function with respect to constituent matters." In the case of Black, however, there does not appear to be a constituent issue involved. The grievance seems completely personal.

Nevertheless, we believe that the standards of conduct set forth in Advisory Opinion No. 1 constitute an appropriate guide in this matter. First, no other House Rule or Advisory Opinion expressly addresses the issue of the proper standard of conduct applicable to a Member in his interactions with federal agencies. Second, the evils which Advisory Opinion No. 1 seeks to prevent exist regardless of whether the congressional interaction is on behalf of a constituent or not.

With two exceptions, Advisory Opinion No. 1 permits Members to communicate with federal agencies only in order to obtain information or access. The two exceptions are the provisions that a Member may express judgments or call for reconsideration of an administrative response. A request to fire an employee cannot be seriously considered a call for reconsideration of an administrative response. Thus, the express judgment provision is the only one which could possibly permit such a request.

As noted above, the Ethics Manual interprets this provision to mean that "if a Member has a strong feeling about a particular case, judgment upon the merits may be expressed or argued." [Ethics Manual, pp. 43-44.] We believe that this provision presupposes that merits exist from which to argue. A naked request to take an action without the provision of any rationale is hardly an expression of judgment on the merits. Thus Wright's request that the Bank Board fire Black for a personal reason unrelated to any conceivable aspect of his performance is not a permissible expression of judgment. Ac-

cordingly, it is an impermissible communication under the House Rules as interpreted by Advisory Opinion No. 1.

4. Final Comments

In sum, Wright's communications with the Bank Board resulted in four violations of House Rule XLIII, clause 1 as interpreted by Advisory Opinion No. 1. Shannon Fairbanks testified as to her opinion why Wright acted as he did in the course of his Bank Board interventions:

> I believe that Mr. Wright drew his information and conclusions about the accuracy of the picture of what was happening in the S&L industry in Texas and within the regulatory system not from a careful consideration of the individual facts by the regulatory authorities but rather from what he represented to be very strong negative views of people in the S&L industry whom he knew.
>
> [These people] represented that the regulators were severely over-stepping their bounds. [Wright] chose to listen to them. [They said] that their right to make profits and to run profitable enterprises [was] being unnaturally—improperly—restricted and constrained by incompetence and/or regulators gone awry. [Wright] was very strong in his explanation of the problems that were being encountered by the people who had met with him and talked to him.
>
> His only . . . attempt to get the other side of the story was limited to a couple of forums in which for the most part [none of] the individual instances were joined so that he could hear the regulators explain in detail their case and perhaps come to another judgment . . . .
>
> [First, when Wright discussed individual institutions, he resorted] to . . . private communications of his concerns to Ed with no ability to go back and give him the facts from the other side, but simply a need to keep moving toward what he saw was another result other than the result he heard about [from his constituent].
>
> Secondly, that in those forums where we were convened to talk—not one-on-one with Ed, but generally, so there were some people there who could detail this out—the reason for those meetings was so that the Bank Board could be presented with the concerns being heard from the *other* side. Individuals at that meeting who had concerns were later dealt with, their concerns, but [with] Mr. Wright, we [were not permitted to] bring people to sit down with him or Mr. Mack and detail this out.

> So I think what happened is, for whatever reason, and I can't opine about it because I don't know, Mr. Wright became subject to a vision or a view of what was going on that he carried with him and made public, and that vision said that legitimate enterprises were being hurt by inept, inappropriate regulators. And, therefore, all of these acknowledged financial problems in the industry were not going to be addressed or were going to be held on hold because giving more money to these regulators would not be appropriate in those circumstances.
>
> Now, I think Mr. Wright had available to him—and the thing that bothered me personally was that he *had* available to him—what everybody else had. He is a bright man, and he had available to him the ability to sit and at least hear the other side and let it be laid out. And Mr. Wright chose not to do that. I think that could have been useful to him in making his judgments.

[Fairbanks Tr. 147-51.]

Wright's ill-considered series of interventions demonstrates the wisdom of Senator Douglas's first ethical standard: "a legislator should not immediately conclude that the constituent is always right and the administrator is always wrong, but as far as possible should try to find out the merits of each case and only make such representations as the situation permits." [P. Douglas, *Ethics in Government* 88-91 (1952).]

Special Outside Counsel hereby submits this report to the Committee for its consideration.

Dated:

February 21, 1989

Richard J. Phelan
Special Outside Counsel